

## SECOND DIVISION

**[ A.M. No. MTJ-00-1248, December 01, 2000 ]**

**FABIANA J. PADUA, COMPLAINANT, VS. JUDGE EUFEMIO R. MOLINA, MUNICIPAL TRIAL COURT, BRANCH II, SAN FERNANDO, LA UNION, RESPONDENT.**

### D E C I S I O N

**DE LEON, JR., J.:**

Before us is the administrative complaint filed by Fabiana J. Padua, charging Judge Eufemio R. Molina, Presiding Judge of Branch II of the Municipal Trial Court (MTC) of San Fernando, La Union, with gross ignorance of the law and grave abuse of discretion in connection with the preliminary investigation which he conducted in Criminal Case No. 31693, entitled "People of the Philippines v. Julio F. Padua." Complainant is the wife of Julio F. Padua who is the accused in said criminal case, and mother of the victim, Bartholomew J. Padua.

In the afternoon of June 9, 1997, the accused shot the victim during an altercation. The victim died as a result thereof. On June 10, 1997, Senior Police Officer IV Herminio C. Barnachea, as the chief investigator of the case, filed a criminal complaint for parricide against the accused. The complaint was raffled to the sala of respondent judge for preliminary investigation. In his Order dated June 18, 1997, respondent judge directed the accused to submit his counter-affidavit, the affidavits of his witnesses and other supporting documents within ten (10) days from receipt of said Order.

On June 23, 1997, a certain Mercedita Opamil-Padua, claiming to be the widow of the victim, submitted an Affidavit of Desistance, stating, among others, that:

x x x [A]fter careful and due consideration of the facts and circumstances of the incident, I came to the conclusion that my father-in-law, Julio F. Padua, is not fully to be blamed for the death of my husband, BARTOLOMEW J. PADUA;

x x x [I]n order to maintain peace and harmony in the family, I hereby manifest my desistance in the prosecution of Criminal Case No. 31693 for Parricide against the accused father-in-law, Julio F. Padua, and therefore request that the complaint [be] dismissed.<sup>[1]</sup>

Attached to the Affidavit of Desistance was the marriage contract dated January 11, 1988 of Mercedita Opamil-Padua and the victim.

On July 24, 1997, on the basis of the said Affidavit of Desistance, the accused, Julio F. Padua, filed a motion to dismiss the criminal complaint and prayed for his

immediate release from detention. Respondent judge granted the motion of the accused "in view of the desistance of the widow, who under the law is the offended party and the primary forced heir of the deceased."<sup>[2]</sup> Respondent judge also ordered that the records of the case be forwarded to the Office of the Provincial Prosecutor for appropriate action.

In her sworn letter-complaint dated August 20, 1997, complainant claims that respondent judge erred grievously in his disposition of the case; that the order of respondent judge granting the motion to dismiss was issued with utmost partiality and without setting it for hearing; and that respondent judge did not even issue a resolution regarding the preliminary examination held on August 5, 1997 although she lengthily testified thereat, thus lending credence to her suspicion that the dismissal of the case as well as the subsequent release of the accused was a forgone conclusion.

Complainant also states that, from what she understands, parricide is a heinous crime and a non-bailable offense. As such, complainant asks why respondent judge ordered the dismissal of the complaint and the release of the accused. She points out that the accused was released on August 15, 1997 although the case was hastily endorsed to the Office of Provincial Prosecutor on August 18, 1997 without the transcript of stenographic notes of her testimony given during the August 5, 1997<sup>[3]</sup> preliminary examination.

Complainant maintains that if there is anybody who can pardon the accused, it should neither be Mercedita Opamil-Padua nor the respondent judge, who allegedly manipulated the dismissal of the complaint, but the complainant, as mother of the victim, or Rufina Ochavillo-Padua, who is the legal wife of the victim. Complainant claims that respondent judge knew that Mercedita Opamil-Padua was not the legal wife of the victim, and that Rufina Ochavilla-Padua was even present during the August 5, 1997 preliminary examination.

Complainant likewise stated that she was not surprised that the case was assigned to respondent judge because since 1969 the accused has been proudly mentioning to the complainant that respondent judge was a close friend who has been helping him facilitate the dismissal of cases before his sala; and that she was also informed by reliable sources that respondent judge frequently visited the accused while he was in jail. However, no one was brave enough to testify on this matter.

Respondent judge denies the allegations of complainant. He avers that he followed the rules of procedure in the conduct of the preliminary investigation and thus, no gross ignorance of the law can be imputed to him; and that he did not set the motion to dismiss for hearing because the scope of a preliminary investigation is inquisitorial and not a trial on the merits where the fiscal or prosecutor is entitled to be heard. Besides, the Office of the Provincial Prosecutor, according to him, has the power to review, disregard or overrule his order of dismissal. Respondent claims that with the dismissal of the case, a resolution on the preliminary examination of the complainant as a prosecution witness became moot and academic.

Respondent judge further contends that no grave abuse of discretion could be attributed to him, in dismissing the criminal complaint because it was based on the Affidavit of Desistance of Mercedita Opamil-Padua. However, during the preliminary