

## **FIRST DIVISION**

**[ A.M. No. RTJ-99-1483, September 17, 1999 ]**

**ATTY. LAURO D. GACAYAN AND NOEL SAROL, COMPLAINANTS,  
VS. HON. FERNANDO VIL PAMINTUAN IN HIS CAPACITY AS  
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 3,  
BAGUIO CITY, RESPONDENT.**

### **D E C I S I O N**

**YNARES\_SANTIAGO, J.:**

In this administrative complaint, respondent stands charged with Gross Ignorance of the Law, Incompetence, Partiality and Conduct Unbecoming of a Judge.

The factual and procedural antecedents as summed by the Office of the Court Administrator (OCA) are as follows:

"Complainant Noel Sarol is the accused in Criminal Case No. 14549-R, for Homicide, which was filed before the Regional Trial Court, Branch 3, Baguio City, in an information dated September 26, 1996.

On October 14, 1996, complainant Sarol was allegedly arraigned and thereafter, trial followed. The Honorable Joven Costales was then the Acting Presiding Judge of the Regional Trial Court, Branch 3, Baguio City.

After the prosecution rested its case, the then Presiding Judge Hon. Joven Costales, directed the accused to present his evidence on March 2, 1998 at 8:30 in the morning. Complainant Sarol through counsel instead of presenting his evidence filed a Motion for Leave to File Demurrer to Evidence with the Demurrer to Evidence already attached to said Motion.

On March 2, 1998, the Demurrer to Evidence was scheduled for hearing. The Trial Prosecutor, however, asked for ten (10) days within which to submit his Opposition thereto. Thus, Judge Costales was constrained to set the hearing on the Demurrer to Evidence on May 4, 1998 at 8:30 in the morning.

Meanwhile, the Honorable Fernando Vil Pamintuan took over as the Presiding Judge of the Regional Trial Court, Branch 3, Baguio City. For the first time he presided in the hearing of the case. He then inquired from the Trial Prosecutor about his announced Opposition to the Demurrer to Evidence and the latter manifested off-the-record that he is not submitting anymore said Opposition. Thereafter respondent directed the trial prosecutor and complainant Atty. Gacayan to see him in his chambers where he reportedly said the following:

"You see somebody died here and I can not just dismiss this case as a result of insufficiency of evidence. I want to talk to the mother of the deceased."

or words to that effect.

Consequently, he issued an order which directed the mother and the brother of the deceased who were not listed as witnesses in the information to appear in the 'HEARING ON THE DEMURRER TO EVIDENCE' scheduled for May 25, 1998 at 8:30 in the morning. No other persons were required to appear on May 25, 1998.

On May 25, 1998, complainants herein were surprised to see inside the courtroom the witnesses who were already presented by the prosecution, namely, Restituto Abuan and Alejandro Castaneda. The record of the case shows that a subpoena was issued to all prosecution witnesses, including the policemen who already testified to appear on said date without any motion from the prosecution or from the accused requesting for their appearance considering that the same was for the hearing on the Demurrer to Evidence only. It was allegedly based purely on the initiative of the respondent judge.

The mother and brother of the deceased as well as the other 'witnesses' subpoenaed by respondent Judge on his own discretion, were absent on said day thus, he set the hearing on the Demurrer to Evidence on June 23, 1998 at 8:30 o'clock in the morning sharp. Thereafter, complainant Atty. Gacayan made the observation that the proceedings then taking place was unprocedural. He was warned that he would be cited for contempt if he shall say that again.

Complainant Atty. Gacayan claims that at about 10:30 in the morning of May 25, 1998 while he was about to leave the sala of RTC, Branch 4, Baguio City, which is next to RTC, Branch 3, he observed that the prosecution witnesses (Alejandro Castaneda and Restituto Abuan) who allegedly testified for the prosecution were seen talking to the respondent Judge. Thus, he (Atty. Gacayan) went near the door of the Session Hall of RTC Branch 3 and when seen by respondent Judge, asked him to approach the bench. Thereafter respondent Judge continued asking questions to said witnesses on whether they saw complainant Sarol stabbed (sic) the victim, which they answered 'no'.

Complainant contends that when said witnesses testified, they categorically stated under oath that they did not witness the incident. It was obvious that the Honorable Respondent Judge wanted the said witnesses to admit that they saw the killing. Thereupon, he again manifested his objections to the procedure being followed by the Honorable Respondent judge considering that:

- 1] the prosecution had long rested its case;
- 2.] the Court had long granted the accused's Motion for Leave to File Demurrer to Evidence and that the

hearing being conducted is supposed to be a hearing on the Demurrer to Evidence, not [the] presentation of prosecution's evidence; and

- 3] the hearing for that day insofar as the Sarol case had been adjourned and terminated.

On June 17, 1998, respondent Judge ordered the arrest of one Mirriam Dominguez whom he described as an "eyewitness" to the incident. This was done without any motion from the Prosecution and though there is no record whatsoever supporting said conclusion that she is an eyewitness. Thereafter respondent Judge talked alone to said witness in his chambers

In view of the unusual interest exhibited by the respondent Judge in favor of the prosecution and the highly unusual procedure he was then conducting the hearing on the Demurrer to Evidence, they filed a Motion to Suspend further Proceedings on the Demurrer to Evidence until the Motion for Inhibition is resolved by the Honorable Court.

Considering that there is no resolution yet on his Motion for Inhibition as well as the pending Motion to Suspend Further Proceedings, complainant Atty. Gacayan did not appear in the hearing on the Demurrer to Evidence.

The minutes of the hearing on June 23, 1998 shows that the respondent Judge made the following orders

- a. DENYING the Motion for Inhibition;
- b. DENYING the Motion to Suspend Further Proceedings;
- c. ORDERING the prosecution to present the witness who was ordered arrested by the Honorable Court though:
  1. There was no valid motion complying with the requisites of Rule 15 of the Rules of Court, filed by the prosecution praying that it be allowed to present further evidence – assuming such a procedure is allowed considering that it had long rested its case and there is a pending DEMURRER TO EVIDENCE;
  2. There is no resolution yet on the demurrer to evidence.
- d. ORDERING the PAO lawyer who was then present in court to act as counsel *de officio* without giving said lawyer sufficient time to study the case.
- e. ORDERING the continuation of hearing of said case to June

24, 1998 at 8:30 in the morning and 2 o'clock in the afternoon.

In the morning of June 24, 1998 at 8:30, respondent Judge again called the above case for hearing despite the fact that there was no notice sent to complainant Atty. Gacayan. At 2:00 o'clock in the afternoon of June 24, 1998, he appeared as counsel for the accused and right then and there, he was ordered by the respondent Judge to conduct the cross-examination of the witness he ordered arrested despite:

- a. his vigorous objections to the unprocedural manner in which the hearing on the Demurrer to Evidence is being conducted by the respondent judge;
- b. his objection that there was no motion duly set for hearing for the re-opening of the prosecution's evidence;
- c. the fact that he has not heard the testimony of the witness presented by the prosecution who was ordered arrested by the respondent Judge without any motion from the prosecution;
- d. the fact that there was no transcript of records of the testimony of the witness ordered arrested by the respondent Judge on his own without any motion from the prosecution.

Consequently, respondent Judge agreed to the resetting of the cross-examination of the witnesses but ordered the resumption of the hearing of said case on July 1, 1998 at 2:00 p.m. despite his (Atty. Gacayan's) vigorous objection considering his obvious partiality. This is so because as early as June 22, 1998, respondent informed the lawyers that the calendar of the court is already full, yet he scheduled for June 24, 1998 at both 8:30 a.m. and 2:00 p.m. the Sarol case when the testimony of the witness he ordered arrested was not completed on June 23, 1998. Complainants contend that the act of respondent Judge is highly unusual to say the least and a blatant violation of the unwritten rule on how a judge shall conduct himself.

Complainants stressed that considering the patent disregard by the respondent Judge of the basic rules governing the trial of the criminal case, they were left with no other recourse but to bring the matter to the attention of this Honorable Court in order for it to exercise its function as well as its disciplinary powers over men in robes who are causing litigants to lose trust in our judicial system.

On August 7, 1996, Hon. Court Administrator Benipayo directed respondent Judge Fernando Vil Pamintuan to comment on the complaint of Atty. Lauro Gacayan and Mr. Noel Sarol.

Respondent Judge in his comment alleged in sum that:

1. He was a newly-appointed Judge of barely a few months when introduced to Criminal Case No. 14549-R, it was still on a hearing stage on accused's Demurrer to Evidence;
2. On May 4, 1998, as the new Judge inquired into the nature of the case and called for the Public Prosecutor Benedicto T. Carantes and counsel for the accused, Atty. Lauro D. Gacayan, in his Chamber and informed them that he would need time to examine the testimony of the witnesses and other evidence already on record. Thus, the hearing of the Demurrer to Evidence was reset on May 25, 1998, at 8:30 o'clock in the morning with the agreement of both Public Prosecutor and counsel for the accused. However, he takes exception to counsel for the accused's allegation that he would not dismiss the case for insufficiency of evidence. He simply said that he had to study the record of this case and see the witnesses and the private complainant/relatives of the victim in Court so that he could be properly oriented as to the evidence in this case;
3. On May 25, 1998, only two (2) prosecution's witnesses appeared, Restituto Abuan and Alejandro Castaneda, whose presence were (sic) known to counsel for the accused, Atty. Lauro D. Gacayan. These witnesses affirmed that they did not see the killing of the victim. This was in the presence of counsel for the accused, Atty. Lauro D. Gacayan. Then, he issued an order requiring the witnesses who failed to appear to show cause why they should not be cited in contempt of court. The hearing on the Demurrer to Evidence was reset to June 23, 1998, at 8:30 o'clock in the morning. Again, said resetting was with the consent of the Public Prosecutor and counsel for the accused.
4. For failure of the prosecution's witnesses Mirriam Dominguez and Joseph Sarol to appear in Court, despite notice, and again failure to show cause why they should not be cited in contempt of court, the Court issued a warrant for their arrest. Mirriam Dominguez was arrested on June 16, 1998. Since the next hearing on the Demurrer to Evidence was still on June 23, 1998, Mirriam Dominguez could have been detained at the Baguio City Jail until the said next hearing. That was the reason why she had to see him for her possible release before June 23, 1998. Had he not granted an audience to prosecution witness Mirriam Dominguez, she could