

SECOND DIVISION

[A.M. No. MTJ-92-720, September 05, 1996]

SIMEON BENJAMIN, SR., COMPLAINANT, VS. JUDGE EUGENIO C. ALABA, RESPONDENT.

D E C I S I O N

TORRES, JR., J.:

Simeon Benjamin, Sr. filed a complaint against Judge Eugenio Alaba alleging that the latter dismissed Criminal Case No. 1720, entitled "People vs. Romulo Geriza and Jose Maningo," with grave abuse of discretion and authority in view of the admission by accused Geriza that he killed complainant's son, Simeon, Jr.. Prior to the dismissal of the complaint for murder, it was twice amended, first to drop Maningo, and second, to amend the charge to Homicide. The amendments were allegedly made by the respondent judge without any motion or basis for such action. When the case was set for preliminary investigation, the parties were required to submit "clarificatory questions." But on March 27, 1991, when counsel for private prosecution filed an urgent ex-parte motion to reset the conference, the respondent judge dismissed the case for failure to establish a *prima facie* case.

In his comment, respondent judge averred that Jose Maningo was charged with only Light Threats by virtue of the testimonies of the two prosecution witnesses. He also narrated the facts relative to the dismissal of the complaint as follows:

"a. On March 7, 1991, the case at bar was called for preliminary conference. The conference did not prosper because of a new incident which came up. The Court then gave the respective parties an allowance. A xerox copy of the order for the allowance is hereto attached as annex - "2".

b. On March 14, 1991, since both parties were not yet ready for the preliminary investigation, the Court ordered the respective clarificatory questions to be propounded by the Court on the witness subject of the clarificatory questions. A xerox copy of said order is hereto attached as annex - "3".

c. On March 25, 1991, the Court called the case again for preliminary investigation as scheduled in the last order. The witnesses for the prosecution, the very persons who executed the affidavits which were the basis of the complaint, did not appear. The counsel for the private prosecution manifested however the reason for the non-appearance of the witnesses. Thus, an order for postponement, a xerox copy of which is hereto attached as annex "4", was issued.

d. On March 27, 1991, the four (4) and only witnesses for the prosecution did not appear again in spite due notice. The successive

non-appearance of the only witness lead this Court to conclude that the only witnesses for the prosecution were no longer interested to testify against the accused. A prima facie case could not be established by the prosecution, neither can the accused be held for trial in the absence of these four witnesses. Under this circumstance, the Court had no other alternative but to dismiss this case. A xerox copy of the order of dismissal is hereto attached as annex "5".^[1]

Respondent judge contended that the resolution dismissing the complaint was merely recommendatory and therefore not final. The resolution was purportedly an exercise of the Court's discretion and was based on Rule 112 of the new rules on Criminal Procedure.

On July 06, 1993, the Court issued a resolution referring the case to the Office of the Court Administrator for evaluation, report and recommendation.^[2]

On September 30, 1993, it was resolved that the complaint be referred to Executive Judge Getulio Francisco of the Regional Trial Court of Tacloban City, Leyte, for investigation and report.^[3]

On July 26, 1994, Judge Francisco issued an order dated July 08, 1994, recommending the dismissal of the administrative complaint in view of complainant Simeon Benjamin, Sr.'s motion to dismiss dated July 04, 1994.^[4]

The Court, in its resolution dated Aug. 04, 1994, did not accept the recommendation of Judge Getulio Francisco. It stated that the motion to dismiss of the complainant did not, by itself, constitute sufficient ground to warrant the dismissal of the instant complaint considering that it was filed long after complainant's Reply was received by the Court.^[5] Hence, the administrative investigation proceeded.

On November 21, 1994, Judge Francisco submitted his report and with the following recommendation:

"Based on the investigation conducted by the undersigned Executive Judge, it is hereby recommended that this case be considered submitted for resolution by the Honorable Supreme Court based on the evidence on record. The complainant sent a letter to the undersigned dated September 22, 1994 asking that the record of this case be forwarded to the Honorable Supreme Court based on the pleadings on hand."^[6]

On February 14, 1995, a resolution was issued returning to the Executive Judge his report, it appearing that the said report merely summarized the testimony of the complainant and one of the respondent's witnesses. It was resolved that the Executive Judge submit a new and complete report on the administrative investigation.^[7]

In the amended investigation report dated March 14, 1995,^[8] the following were the findings of the Executive Judge:

"Based on the testimonial evidence and the pleadings as received, it is the finding of this investigating Executive Judge that a case for Murder