

## **EN BANC**

**[ A.M. No. MTJ-92-731, November 29, 1996 ]**

**EDNA D. DEPAMAYLO, COMPLAINANT, VS. JUDGE AQUILINA B. BROSTARLO, RESPONDENT.**

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

**MENDOZA, J.:**

This is a complaint charging respondent judge of the Municipal Circuit Trial Court at Carles-Balasan, Iloilo with misconduct and ignorance of the law.

Complainant is the widow of Police Officer Nilo Depamaylo who was shot and killed at a cockpit in Barangay Kinalkalan, Balasan, Iloilo while serving a warrant of arrest. The suspect, Nerio Salcedo, a member of the Sangguniang Panlalawigan of Iloilo, surrendered to the police shortly after the incident, yielding a 12-gauge shotgun which he allegedly used in shooting the victim and a .38 caliber revolver. He was charged with murder in a complaint filed by the Chief of Police. The case was assigned to respondent judge of the MCTC of Carles-Balasan for preliminary investigation.

On June 3, 1992, Salcedo filed a petition for bail alleging that the evidence against him was not strong. His motion was set for hearing on June 5, 1992 at 9:00 o'clock in the morning, at which the Chief of Police appeared for the prosecution. At about 9:35 a.m., however, the provincial prosecutor filed a manifestation that he needed time to decide whether to oppose the petition or to recommend bail, because he had not been furnished copies of the complaint and supporting affidavits. He, therefore, asked that the hearing be reset on June 11, 1992. But respondent judge denied the motion on the ground that the matter had already been submitted for resolution earlier at 9:15 a.m. of that day.

On June 9, 1992, respondent judge issued a resolution in which she recommended that a charge of homicide instead of murder be filed against the accused on the ground that there was no circumstance which might qualify the killing to murder. No copy of the resolution was furnished to complainant.

On review, the provincial prosecutor found the crime to be murder and therefore filed the corresponding information in the Regional Trial Court against Salcedo. The provincial prosecutor based his finding on the autopsy which showed that the victim had been shot from behind.

Complainant then filed this complaint charging respondent judge with gross ignorance of the law and highly irregular conduct in (1) denying the prosecution an opportunity to be heard on the question of bail and not informing complainant of the proceedings; (2) hearing the petition for bail in violation of Rule 15, § 4 which requires that notice of hearing of a motion must be served on the adverse party at

least three days before the hearing; and (3) reducing the crime charged from murder to homicide.

In her comment, Judge Brotarlo points out that complainant in this case was not the one who filed the criminal complaint, but it was the Chief of Police of Balasan, Inspector Norberto B. Simon. Nor was she listed as a witness. This was the reason, according to respondent judge, why complainant was not given notice of the proceedings in the preliminary investigation she conducted.

With respect to the allegation that she arbitrarily denied the prosecution the opportunity to oppose the motion for bail of the accused, respondent claims that the hearing on the petition for bail had already been terminated and the matter had already been submitted for resolution when the provincial prosecutor asked for postponement. She claims that the prosecution, which was duly represented by Chief of Police Simon, had earlier rested its case. Respondent contends that the Chief of Police had authority to appear for the prosecution under § 5 of Rule 110, which provides:

*Who must prosecute criminal actions.* - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when there is no fiscal available, the offended party, any peace officer or public officer charged with the enforcement of the law violated may prosecute the case. This authority ceases upon actual intervention of the fiscal or upon elevation of the case to the Regional Trial Court.

As to the charge that she heard the defendant's motion for bail without observing the three-day notice requirement, she argues that rule 15, § 4 allows a court, for good cause, to hear a motion on shorter notice and that in this case the accused was "suffering from illness wherein his life was in danger,"<sup>[1]</sup> for which reason he was released to his physician's custody and confined in a hospital.

Finally, respondent states that she thought the crime was homicide and thus bailable, based on the affidavits and testimonies of the Chief of Police and two witnesses.

Complainant filed a reply, to which respondent submitted a rejoinder, after which this case was referred to Executive Judge Tito G. Gustilo of the Regional Trial Court of Iloilo City for investigation, report, and recommendation.

Judge Gustilo recommended the dismissal of the case in view of an Affidavit of Desistance dated August 17, 1994 executed by the complainant who cited as reason for her decision the fact that she was working in Manila as a helper and could not attend to the case. This was not considered by the Court to be a sufficient reason for the withdrawal of the complaint and the Investigating Judge was directed to proceed with the investigation.

On April 22, 1996, Judge Gustilo submitted his report finding that although the action of respondent was clearly erroneous, it did not appear to have proceeded from improper motives. For this reason, he recommended that respondent judge be found to be merely guilty of procedural lapses and reprimanded and given a warning