

MALACANANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 279

SUSPENDING MR. ANTONIO RODRIGUEZ FROM OFFICE AS MUNICIPAL JUDGE
OF LAS PIÑAS, RIZAL.

This is an administrative case filed by Maria Susan Peret against Municipal Judge Antonio Rodriguez of Las Piñas, Rizal, for (1) violation of Section 5 of the Judiciary Act of 1948, (2) ignorance of the law and gross incompetence and (3) partiality. The case was investigated by the Executive Judge of the Court of First Instance of Rizal.

The records show that Criminal Case No. 314 (for consented abduction) was filed by complainant before the Municipal Court of Las Piñas, Rizal, presided by respondent. The accused therein filed a motion to dismiss to which complainant filed an opposition on October 3, 1968, and the case was then submitted for resolution. On May 12, 1969, or after more than seven (7) months had elapsed, respondent dismissed the criminal case.

At the hearing of this administrative case, complainant did not testify but presented, through counsel, documentary evidence as exhibits consisting of the following: copy of her opposition to the motion to dismiss dated October 3, 1968; copy of the order of dismissal of Criminal Case No. 314 by respondent dated May 12, 1969; transcript of the stenographic notes of the proceedings in the criminal case; medico-legal case report dated January 17, 1969; statement of complainant subscribed before the respondent judge; and the birth certificate of complainant. With the exception of complainant's birth certificate, all the documentary evidence presented by her counsel was admitted by respondent.

In his defense respondent testified that the delay in the disposition of the criminal case beyond the reglementary period of 90 days was due to the failure of his clerk of court to give him on time the records of the case, for which he reprimanded the latter who by reason thereof resigned from his position; that he dismissed the criminal case because of his findings that complainant was no longer a virgin on the date of the incident, as she had previous sexual intercourse with another man; that complainant's minority was not established in view of the failure of the prosecution to present her birth certificate after the fact thereof was admitted by the defense; and that the offended party was not taken away with some character of permanency inasmuch as the purpose of the accused in going to his brother's house, where

complainant was brought, was to borrow money and he had to lie with her there to persuade her to go home. For the above reasons, respondent opined that no crime was committed within his jurisdiction and that there was no lewd design on the part of the accused.

After the hearing, the Executive Judge-Investigator found respondent guilty of violation of Section 5 of the Judiciary Act of 1948 for failure to resolve the case within the period prescribed by law. He also found that the dismissal of the criminal case was not well taken; that respondent erred in holding that complainant was no longer a virgin on the basis of the testimony of the accused that the offended party confided to him that she had previous sexual intercourse with another man, because said self-serving testimony was not sufficient to cast a cloud over the chaste character of complainant for "even if the accused has had previous sexual intercourse there is still a case of abduction with consent and that virginity referred to in Article 343 is not to be understood in so material a sense as to exclude the idea of abduction of a virtuous woman of good reputation" (U.S. vs. Casten, 34 Phil. 808); that he erred in holding that minority had not been established for failure of the prosecution to present the birth certificate after minority was admitted by the defense, as "it is neither proper nor permissive to consider a case closed, or to render judgment therein by virtue of an agreement entered into between the provincial fiscal and the counsel for the accused with reference to facts, some of which are favorable to the defense, and the others related to the prosecution, without any evidence being adduced or testimony taken from the witnesses mentioned in the agreement; such practice not authorized and defeats the purpose of the criminal law; it is an open violation of the rules of criminal procedure" (U.S. vs. Pobre, 11 Phil. 51); and that respondent also erred in ruling that the offended party was not taken away with some character of permanency because this factor is no longer controlling as held in the case of People vs. Ingayo, CA-G.R. No. 3723-R, Dec. 10, 1949, that "no matter how short is the taking away the crime still exists." Again, "any character of permanence is not required but only an appreciable period of time" (People vs. De la Cruz, 48 Phil. 533), which in this case exists.

The Investigator concluded that the views of respondent regarding jurisdiction and the absence of lewd design cannot stand scrutiny, and recommended that respondent be admonished.

However, after a careful review of the records of the case, I agree with the Secretary of Justice that respondent also committed one glaring error for dismissing the case not under his

jurisdiction without transmitting to the Court of First Instance the records of the preliminary investigation, which is tantamount to disposing of the same on the merits. Granting without admitting that respondent found no probable cause to bind the accused, he should have transmitted to the Court of First Instance the abstract of the testimony and other papers of the preliminary investigation together with his conclusion and leave the matter to the fiscal for whatever action he may desire to take in the premises.

" . . . A justice of the peace, after the second stage of the preliminary investigation, can do nothing except to transmit the abstract of the testimony and other papers of the preliminary investigation to the Court of First Instance and the inference is thus made that the justice of the peace has absolutely no authority to order the release of the defendant. But this provision should be read in conjunction with all other provisions of Rule 108 /now Rule 112, New Rules of Court/. Since, as above stated, the purpose of the second stage of the preliminary investigation is to determine whether or not the accused should be held for trial, . . . the justice of the peace conducting such preliminary investigation, upon conclusion thereof and before transmitting the abstract to the Court of First Instance, is duty bound to state his conclusion as to the result of such investigation, by declaring either that there are reasonable grounds to believe that the crime has been committed and the accused is guilty thereof, or that the accused should be released because of insufficiency of evidence."

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" . . . Section 13 of Rule 108 /Sec. 12, Rule 112, New Rules of Court/ has been taken substantially from Section 59 of the Code of Criminal Procedure drafted by the American Law Institute wherein it is provided that "when the magistrate has discharged the defendant or has held him to answer," he shall transmit the record of the preliminary investigation to the competent court. The quoted words were eliminated in Section 13 of Rule 108 as unnecessary, for even without them the provision would have the same import. Said section, as it is now worded, clearly means that upon the conclusion of the preliminary investigation, whatever its result might be, whether the accused is released or held for trial in the Court of First Instance, it is the duty of the justice of the peace to transmit to the clerk of the Court of First Instance the warrant of arrest, the abstract of the testimony of witnesses, the undertaking or bail of the defendant

and the person of the defendant if not on bail. But, of course, if the defendant has been released, there is no need of transmitting his person or his bail to the Court of First Instance. The purpose of compelling the justice of the peace to transmit the record of the preliminary investigation to the clerk of the Court of First Instance in both instances is to provide the fiscal with a basis for whatever action he may desire to take in the premises, either to prepare the corresponding complaint or information or if the accused has been discharged, to seek his rearrest upon a new complaint if he believes the order of the justice of the peace to be erroneous." (Biron vs. Cea, 73 Phil. 673.)

Where the complaint contains facts, which if true, would constitute a crime not within the jurisdiction of the justice of the peace, the duty of the latter after conducting the investigation is to decide whether probable cause exists that the accused is the author of the crime charged. If there are such causes he should forward the case to the corresponding Court of First Instance, otherwise he should dismiss it but in no case can he render judgment. If he does so, he acts without jurisdiction and consequently the judgment is null and of no effect. (Ngo Hok Chef vs. Aquino, 72 Phil. 90.)

Wherefore, and as recommended by the Secretary of Justice, Mr. Antonio Rodriguez is hereby suspended from office as municipal judge of Las Piñas, Rizal, for three (3) months without pay, effective upon receipt of a copy of this order. He is also warned that repetition of similar acts will be dealt with more severely.

Done in the City of Manila, this 13th day of March ,
in the year of Our Lord, nineteen hundred and seventy-one.

By the President:


MELCHOR
Executive Secretary