



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**ATTY. JEROME NORMAN L. TACORDA** for: **ODEL L. GEDRAGA**,  
Complainant,

**A.M. No. RTJ-13-2359**  
(Formerly O.C.A. IPI No. 12-3851-RTJ)

Present:

- versus -

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, *JJ*.

**JUDGE REYNALDO B. CLEMENS**,  
Respondent.

Promulgated:

**OCT 23 2013**

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**RESOLUTION**

**SERENO, *CJ*:**

The instant case stems from a Complaint-Affidavit dated 21 February 2012 filed by Atty. Jerome Norman Labor Tacorda (Atty. Tacorda) charging Judge Reynaldo B. Clemens (Judge Clemens), Presiding Judge of Regional Trial Court of Calbayog City, Branch 31, Western Samar for gross ignorance of the law and alleged violation of the Child Witness Examination Rule.

In the Complaint-Affidavit, Atty. Tacorda claimed that on 19 January 2012, he presented Odel Gedraga (Gedraga) as witness, then fifteen (15) years old, in Criminal Case No. 6433 entitled "*People of the Philippines v. Belleza*" pending before the *sala* of respondent Judge Clemens. The criminal case involved the alleged murder of Beinvinido Gedraga, Gedraga's father. Atty. Tacorda alleged that the Child Witness Examination Rule was not properly followed by Judge Clemens, based on the following events that had transpired during the trial on 19 January 2012:

First, the trial in open court when Gedraga was presented lasted from 8:30 a.m. to 11:00 a.m., with only a two-minute break.

Second, Atty. Tacorda alleged that in the course of the proceedings Judge Clemens made certain rulings that were not implemented. In his Complaint-Affidavit, Atty. Tacorda cited a single example: Judge Clemen's alleged failure to castigate defense counsel Atty. Allan Mijares (Atty. Mijares) for standing beside the witness despite Judge Clemen's earlier order to Atty. Mijares and the court stenographer to keep their distance. Due to this incident, Gedraga felt humiliated and exhausted.

Third, although the Calendar of Scheduled Cases showed several other cases to be heard, Judge Clemens continued the hearing for three (3) hours, during which Gedraga was subjected to the long ordeal and rigors of trial. Judge Clemens knew that the witness was a minor.

Fourth, Atty. Tacorda claimed that despite his manifestation to let the official interpreter personally interpret the questions and answers, Judge Clemens remained passive on so many occasions. Thus, it was Atty. Mijares who also did the interpretations.

Atty. Tacorda attached to the Complaint the *Sinumpaang Salaysay* dated 24 February 2012 executed by Gedraga. The latter echoed therein the allegations of Atty. Tacorda. The witness narrated that he was exhausted after sitting on the witness stand from 8:30 a.m. to 11:00 a.m. with only a two-minute break.

In his Comment, Judge Clemens belied the allegations of Atty. Tacorda as having no basis. Respondent judge claimed that he did not know that allowing Gedraga to testify from 8:30 a.m. to 11:00 a.m. with only a two-minute break was a violation of the Child Witness Examination Rule. He countered that it was Atty. Tacorda who demanded that the trial start at 8:30 a.m. Further, he said that Atty. Tacorda conducted a long direct examination. Further still, Judge Clemens explained that the cross-examination of the witness by the defense lawyers, Atty. Mijares and Atty. Vevelyn Monsanto (Atty. Monsanto), were in accordance with existing procedures. He added that, with respect to the two-minute break, it was even Atty. Monsanto, and not Atty. Tacorda, who requested it. The supposed two-minute break actually lasted 10 minutes.<sup>1</sup>

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<sup>1</sup> See TSN, 19 January 2012, p. 51.

Judge Clemens vehemently denied letting Atty. Mijares and the court interpreter surround Gedraga. Respondent judge cited the Transcript of Stenographic Notes (TSN)<sup>2</sup> in this wise:

Atty. Jerome Tacorda:

Your Honor please, may I ask the Court that the Interpreter as well as the defense counsel will not surround the witness. The public is entitled to see the demeanor of the witness and in accordance with the Court procedure specially that this is a child witness. The defense counsel will maintain a distance because there might be an intimidation, your Honor.

Court:

All right, do not surround the witness.

Atty. Jerome Tacorda:

Thank you, your Honor, for the wisdom of the court.

Atty. Allan Mijares:

Your Honor, I would like to make my manifestation that from the view point of the public, the----(Interrupted)

I am making my manifestation, your honor. The child was not being surrounded, in fact, everyone was supposedly facing the public and he was not intimidated, he was being aided.

Atty. Jerome Tacorda:

There is already a ruling, your Honor.

Atty. Allan Mijares:

And the intention is to aid and not to intimidate.

Atty. Jerome Tacorda:

Your Honor, that is the intention, but my concern is the ruling of the court.

Court:

Anyway, do not cover the witness.

Atty. Alan Mijares:

Anyway, we submit your honor.

Based on the foregoing, Judge Clemens claimed that he did not violate the Child Witness Examination Rule because, the demand of Atty. Tacorda was granted. If this accusation were true, the latter could have asked the Court to hold Atty. Mijares in contempt of court for violating the order not to surround the witness, but complainant did not.

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<sup>2</sup> TSN, 19 January 2012, pp. 61-63.

Judge Clemens further explained that it was not true that he let Atty. Mijares do the interpretation. Allegedly, when Atty. Tacorda made a manifestation to that effect, respondent Judge immediately took appropriate action, as indicated by the TSN:<sup>3</sup>

Atty. Jerome Tacorda:

Your Honor, we request to read back the transcript your Honor, and not seek the statement from the defense counsel, since he already closed his question your Honor.

Court:

Never mind, anyway you continue.

Atty. Jerome Tacorda:

May I move for the record, your honor, but my purpose is in consonance with the Supreme Court Circular that in case there is a question as to the presentation--- (Interrupted)

Atty. Allan Mijares:

Actually there is no question on the statement being interpreted, only that the interpreter has a hard time interpreting the statement in tagalog.

Atty. Jerome Tacorda:

Your honor, our point is the court of record. What is more important that there is the official stenographer and with this kind of machinery that it be recorded officially in accordance with hierarchy in the plantilla of the Supreme Court.

Court:

Overruled, you continue your interpretation, we are wasting our time, there are other cases to be tried.

Continue, by the way, Rhea, do not ask the defense counsel, you interpret because that is your duty.

Atty. Jerome Tacorda:

I pray your honor, that the statement of the judge be duly recorded to inform the interpreter about her duty and not to ask the defense counsel about the interpretation because it is her duty.

Atty. Allan Mijares:

Your Honor, we only have good intentions here. This representation and was just observed by the court that I'm just trying to aid here because apparently there is an apparent lapse of memory, so we are trying to lead only, your honor.

Judge Clemens refused to accept any fault as to the duration of the examination. He explained that Atty. Tacorda conducted a very long direct

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<sup>3</sup> TSN, 19 January 2012, pp. 86-88.

examination of the witness. It was only when Atty. Monsanto had already finished her cross-examination after Atty. Mijares finished his, that Atty. Tacorda asked for a continuance. The request was at first denied supposedly because Atty. Monsanto had said that her cross-examination would be short. When respondent judge noticed that this proceeding was taking too long, he granted the motion for postponement. He cited the TSN as follows:

Atty. Jerome Tacorda:

Your Honor, at this juncture, may I be allowed to speak and manifest that our hearing started at 8:30 o'clock in the morning and today it is closing to 11:00 and there are other cases to be heard, and in fact this case is set to February 22, secondly your honor...

Court:

Is your cross still long?

Atty. Vevelyn Monsanto:

Not too long, your Honor.

Atty. Jerome Tacorda:

Secondly, your Honor, I think the witness is already exhausted, so, I move for the continuance, with all due respect to the opposing counsel your Honor, and because there are too many calendar of cases today, and it is already 11:00 o'clock in the morning, and we have to pave way to the other cases.

x x x x

Court

Continue, anyway the defense counsel is still not through and we are receiving complaints, and also we are observing the one (1) day cross examination rule. Continue, anyway, it is not 11:00 yet.<sup>4</sup>

x x x x

Atty. Jerome Tacorda

At this juncture, your Honor, I am reiterating my compassionate motion to have for the continuance, since under the Child Witness Protection law, if the witness who is a child is exhausted, he has been in the witness stand since 8:30 your Honor.

Court

You said your cross is short only.

Atty. Vevelyn Monsanto

That will also depend on the answer of the witness, your honor.

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<sup>4</sup> TSN, 19 January 2012, pp. 97-99.

Court

All right, we will grant the motion for a continuance because the Court is not sure you have a short cross examination.<sup>5</sup>

Atty. Allan Mijares

Your Honor, in the interest of Justice, we would like to ask the indulgence of the Honorable Court that the testimony of the witness be terminated today in pursuance to the mandate of the Supreme Court on the day-witness rule and besides your honor, as we would like to be reiterating again and again, we are hearing in this case on the petition for bail.

This witness would be the last witness for the prosecution for the purpose of the petition for bail, and in the interest of justice, we have sufficiently heard his testimony so we will terminate his testimony now, so that, this hearing on the petition for bail for the accused be terminated today, so that, there will be no needless prolonging the proceeding. That is why, we are earnestly reiterating your Honor, that this petition for bail be terminated as soon as possible, your Honor.

Court

Denied because the counsel questions will still be long and the Court has also to try other cases and besides, the witness had been testifying for a long time already from 8:30 to 11:00 o'clock.<sup>6</sup>

#### **THE FINDINGS OF THE OFFICE OF THE COURT ADMINISTRATOR**

The OCA rendered its Report, with a recommendation that charges for gross ignorance of the law against Judge Clemens be dismissed. The OCA found that, aside from bare allegations, no other proof was adduced by Atty. Tacorda to substantiate his claims. On the other hand, respondent judge was able to establish the falsity of the claims against him. According to the OCA, the TSN showed that every time Atty. Tacorda would point out an error in the conduct of the trial, respondent judge would promptly correct the error.

The OCA further said that, in administrative proceedings, the presumption that the respondent has regularly performed the latter's duties would prevail and that the complainant has the burden of proving the contrary by substantial evidence. Charges based on suspicion and speculation cannot be given credence.

The OCA explained that for respondent judge to be held administratively liable for gross ignorance of the law, the acts complained of must be gross or patent. To constitute gross ignorance of the law, not only must the acts be contrary to existing law and jurisprudence, but they must also be motivated by bad faith, fraud, malice or dishonesty.<sup>7</sup> In this case, the

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<sup>5</sup> TSN, 19 January 2012, pp. 106-110.

<sup>6</sup> TSN, 19 January 2012, pp. 110-111.

<sup>7</sup> *GSIS v. Pacquing, et al.*, A.M. RTJ-04-1831, 02 February 2007.

OCA found that Atty. Tacorda failed to prove that the acts of Judge Clemens were ill-motivated.

### ISSUE

Whether Judge Clemens is administratively liable for gross ignorance of the law for supposedly violating the Child Witness Examination Rule.

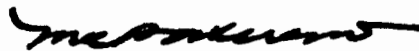
### THE COURT'S RULING

We sustain the findings of the OCA that the acts of Judge Clemens were far from being ill-motivated and in bad faith as to justify any administrative liability on his part.<sup>8</sup> A complete reading of the TSN reveals that he was vigilant in his conduct of the proceedings.<sup>9</sup> In the instances mentioned in the Complaint-Affidavit, he had been attentive to the manifestations made by Atty. Tacorda and had acted accordingly and with dispatch.

It is doubtful that Judge Clemens failed to implement the directives he had issued during the conduct of the trial. Based on the TSN, Atty. Tacorda did not have to make repeated manifestations to respondent Judge after pointing out that the defense counsel tended to crowd the witness and/or that the court interpreter should be the one to translate the testimony. Further, contrary to the allegations of Atty. Tacorda, the TSN showed that respondent Judge was very much concerned with following the proper conduct of trial and ensuring that the One-Day Examination of Witness Rule was followed;<sup>10</sup> but at the same time, he was sensitive to the fact that the witness was already exhausted, having testified for almost three hours.<sup>11</sup>

**WHEREFORE**, the Complaint-Affidavit dated 21 February 2012 filed by Atty. Jerome Norman Labor Tacorda against Hon. Judge Reynaldo B. Clemens, Regional Trial Court, Branch 31, Calbayog City, Western Samar, is **DISMISSED** for lack of merit.

**SO ORDERED.**



**MARIA LOURDES P. A. SERENO**

Chief Justice, Chairperson

<sup>8</sup> *Salvador v. Limsiaco, Jr.*, 519 Phil. 683, 687-688 (2006).

<sup>9</sup> See TSN, 19 January 2012, pp. 20-21, 23-25, 44-46, 51, 61-63, 76-77, 87-88, 97-99 and 105-114.

<sup>10</sup> TSN, 19 January 2012, pp. 97-99

<sup>11</sup> TSN, 19 January 2012, pp. 105-114.

WE CONCUR:

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

*Martin S. Villarama, Jr.*  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

*Bienvenido L. Reyes*  
**BIENVENIDO L. REYES**  
Associate Justice