

**A.M. No. RTJ-17-2486 – RE: INVESTIGATION REPORT ON THE ALLEGED EXTORTION ACTIVITIES OF PRESIDING JUDGE GODOFREDO B. ABUL, JR., BRANCH 4, REGIONAL TRIAL COURT, BUTUAN CITY, AGUSAN DEL NORTE**

Promulgated:

September 8, 2020

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**CONCURRING AND DISSENTING OPINION**

**CAGUIOA, J.:**

I concur in the granting of the Motion for Reconsideration (MR) and the resulting dismissal of the administrative complaint against the late Judge Godofredo B. Abul, Jr. (Judge Abul). Nevertheless, I dissent as to the majority's holding that the death of the respondent in an administrative case before its final resolution should *ipso facto* lead to the dismissal of the case.

To recall, a Complaint was filed against Judge Abul for alleged extortion from detainees in exchange for their release from prison or the dismissal of their criminal cases. After its investigation, the Office of the Court Administrator (OCA) found Judge Abul liable for grave misconduct and recommended that he be fined in the amount of ₱500,000.00 to be deducted from his retirement gratuity. While the administrative case was pending review by the Court, Judge Abul "met an untimely death when he was targeted by an unidentified motorcycle-riding shooter while he was about to depart from his house."<sup>1</sup>

Despite his death, the Court found Judge Abul administratively liable in the September 3, 2019 Decision. He was meted the penalty of forfeiture of all retirement and allied benefits, except accrued leaves. Therein, I joined the Dissenting Opinion of my esteemed colleague, Associate Justice Ramon Paul L. Hernando. Specifically, I agreed with Justice Hernando's appreciation of the humanitarian considerations that should have impelled the Court to mitigate the penalty imposed against Judge Abul. As Justice Hernando noted, Judge Abul was murdered a couple of days after he turned 68. Moreover, Judge Abul's wife, who also sustained gunshot wounds, had written a letter to the Court explaining that she is a housewife who has no work and no source of income and that ever since Judge Abul's preventive suspension from office, their family had faced financial crisis. She therefore entreated the Court to release the accrued leave benefits of Judge Abul as well as such other benefits or assistance which the Court could extend to

<sup>1</sup> Ponencia, p. 2.



them in order to help their family sustain their daily needs and to fund her son's education in medical school. I was of the view then that these considerations should have prompted the Court to dismiss the case. As Justice Hernando stated:

Given the specific circumstances of Judge Abul's case, it is my view that **his mistakes should not unduly punish his spouse or his heirs, especially if they had no hand in or knowledge about the alleged extortions.** Judge Abul's liability should be considered personal and extinguished by reason of his death, and should not extend beyond the said death only to be shouldered by his spouse or his son. Doing so would indirectly impose a harsh penalty upon innocent individuals who not only have to come to terms with the unjust death of a loved one but also live without one henceforth. **Without a doubt, forfeiture of all of Judge Abul's death and survivorship benefits would add to the grief and hardships that his family is already enduring.** Thus, it is my humble position that assuming that the Court would maintain the non-dismissal rule in administrative cases in case of death of the respondent, the Court should, instead of imposing such a strict and unforgiving punishment even when Judge Abul has already passed away, impose a fine to be deducted from his retirement benefits. This is what the OCA had in fact recommended in the first place.<sup>2</sup> (Emphasis supplied)

It is in light of the foregoing, and only to such extent, that I joined Justice Hernando's dissent in the main Decision.

In the instant Resolution, now penned by Justice Hernando, the Court grants the MR, thereby reversing and setting aside the September 3, 2019 Decision. While I welcome the dismissal of the case against Judge Abul, I disagree with the new jurisprudential ruling being laid down here that the death of a respondent in an administrative case before its final resolution is a cause for its dismissal as its non-dismissal is a transgression of the respondent's constitutional rights to due process and presumption of innocence.<sup>3</sup> I submit that the general rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case should still prevail. This is in consonance with the well-settled rule that jurisdiction, once acquired, continues to exist until final resolution of the case.<sup>4</sup>

In espousing now that the respondent in an administrative case also enjoys the right to be presumed innocent pending final judgment in the administrative case, the majority cites Section 14 of the Bill of Rights under the Constitution, which states that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."<sup>5</sup> The majority elaborates that considering criminal cases require a more stringent

<sup>2</sup> J. Hernando, Dissenting Opinion in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Br. 4, RTC, Butuan City, Agusan Del Norte*, A.M. No. RTJ-17-2486, September 3, 2019, p. 7.

<sup>3</sup> *Ponencia*, p. 4.

<sup>4</sup> *Gonzales v. Escalona*, A.M. No. P-03-1715, September 19, 2008, 566 SCRA 1, 15.

<sup>5</sup> *Ponencia*, pp. 4-5.

degree of proof, which is proof beyond reasonable doubt, with more reason should a respondent in an administrative case be presumed innocent until proven guilty as only substantial evidence is required in administrative cases.<sup>6</sup> Thus, since Judge Abul died prior to the Court's decision, the case should be dismissed as he is presumed innocent of the charges against him.

As stated at the outset, I respectfully disagree.

Indeed, the constitutional precept that an accused in a criminal case enjoys the presumption of innocence has been, in several times, applied in administrative cases as well.<sup>7</sup> I agree that this application is proper owing to the other constitutional guarantee of due process.<sup>8</sup> In my view, however, the dismissal of the case by reason of the death of the accused in a criminal case, or of the respondent in an administrative case, is **not** rooted on the right to be presumed innocent until proven guilty. Rather, it is rooted on the fundamental principle that criminal responsibility is personal.<sup>9</sup> Thus, the Court has consistently held that under Article 89 (1) of the Revised Penal Code, criminal liability on account of the death of the accused before final judgment is totally extinguished "**inasmuch as there is no longer a defendant to stand as the accused.**"<sup>10</sup>

I submit that the question on whether an administrative case can still proceed despite the death of the respondent finds a similar footing instead with the question in civil cases on the effect on the status of an ongoing action when a party dies during its pendency.

In civil cases, the criteria for determining whether an action survives the death of a party was explained in *Bonilla v. Barcena*<sup>11</sup> as follows:

x x x The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental. x x x<sup>12</sup>

As gleaned from the foregoing explanation, the action survives when the wrong complained of affects primarily and principally property and property rights with the injury to a person or third party being merely

<sup>6</sup> Id. at 4.

<sup>7</sup> See *Ocampo v. Enriquez*, 815 Phil. 1175, 1238-1239 (2017).

<sup>8</sup> See *Enrile v. Sandiganbayan*, 767 Phil. 147 (2015).

<sup>9</sup> *Vizconde v. Intermediate Appellate Court*, G.R. No. 74231, April 10, 1987, 149 SCRA 226, 233.

<sup>10</sup> *People v. Culas*, G.R. No. 211166, June 5, 2017, 825 SCRA 552, 554-556; *People v. Paras*, G.R. No. 192912, October 22, 2014, 739 SCRA 179, 183-184, citing *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

<sup>11</sup> No. L-41715, June 18, 1976, 71 SCRA 491.

<sup>12</sup> Id. at 495-496.

incidental. In administrative cases, the injury to another is incidental. What is involved in administrative cases is principally an offense to the public office, the same being a sacred public trust. Thus, the Court has consistently held that in administrative cases, no investigation shall be interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.<sup>13</sup> The need to maintain the faith and confidence of our people in the government and its agencies and instrumentalities demands that proceedings in administrative cases against public officers and employees should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses.<sup>14</sup>

Particularly, in *Bolivar v. Simbol*,<sup>15</sup> which involved disbarment proceedings against a lawyer, the Court ruled that the exercise by the Court of its power to discipline is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession.

Arguably, in criminal cases, the private offended party is also commonly relegated as a mere witness for the State, and that the offended party to the action is the People of the Philippines on the ground that the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime. I submit, however, that notwithstanding this shared sound policy, the element of injury to another spells a material and practical difference between a criminal case and an administrative case. To reiterate, in administrative cases, the injury to another is incidental. On the other hand, while crimes are considered offenses against the State, the injury to a private offended party is **far from being** merely incidental.

Another argument raised in support of the dismissal of the administrative case in view of the death of the respondent is that the essence of due process necessitates such dismissal. The majority opines that had death not supervened, the respondent could still pursue other options in keeping with due process, such as filing a motion for reconsideration or asking for clemency. Thus, the majority concludes that it is only right to dismiss the administrative case against the respondent since the spirit of due process encompasses all stages of the case.<sup>16</sup>

Again, I beg to differ from this sweeping pronouncement.

For one, due process considerations are among the already recognized exceptions to the rule that death does not lead to the dismissal of the

<sup>13</sup> *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6, 11, citing REVISED RULES OF COURT, Rule 139-B, Sec. 5 and *Tejada v. Hernando*, A.C. No. 2427, May 8, 1992, 208 SCRA 517, 521-522.

<sup>14</sup> *Id.* at 12, citing *Sy v. Academia*, A.M. No. P-87-72, July 3, 1991, 198 SCRA 705, 715.

<sup>15</sup> A.C. No. 377, April 29, 1966, 16 SCRA 623, 628.

<sup>16</sup> *Ponencia*, pp. 10-11.

administrative case.<sup>17</sup> As such, the opportunity to appreciate or apply this exception has always been available on a case-to-case basis.

Likewise, the concept of due process in administrative proceedings has always been recognized as different with the concept of due process in criminal proceedings. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied.<sup>18</sup>

The essence of procedural due process is embodied in the basic requirement of **notice and a real opportunity to be heard**. In administrative proceedings, procedural due process simply means the **opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of**. "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.<sup>19</sup> Thus, a respondent must be given notice at all times. This is an absolute requirement. Coupled with this, if a respondent is given the opportunity to explain his or her side, then his or her right to due process is *deemed* satisfied. If, on the other hand, a respondent was not originally heard but was eventually heard in a motion for reconsideration, his or her right to due process is still *deemed* satisfied.

**Here, Judge Abul was given notice and a real opportunity to be heard.** On February 18, 2017, the Court *En Banc* issued a resolution which placed Judge Abul under preventive suspension and required him to comment on the complaint and the investigative report of the OCA.<sup>20</sup> Judge Abul did, in fact, file his comment/answer, denying all the accusations and insisting that the same were false, baseless, and concocted by an evil and malicious mind for the sole purpose of besmirching his unblemished record of service in the Judiciary.<sup>21</sup> Thus, the Court then held that he was fully afforded due process during the investigation of the OCA.<sup>22</sup>

<sup>17</sup> In previous cases where the Court upheld the general rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case, the Court had nevertheless recognized certain exceptions to this rule. Thus, the Court held that death of the respondent would necessitate the dismissal of the administrative case upon a consideration of any of the following factors: (1) the observance of respondent's right to due process; (2) the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and (3) it may also depend on the kind of penalty imposed. *Gonzales v. Escalona*, supra note 4, at 15-16, citing *Limliman v. Ulat-Marrero*, A.M. No. RTJ-02-1739, January 22, 2003, 395 SCRA 607.

<sup>18</sup> *Vivo v. Philippine Amusement and Gaming Corporation*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

<sup>19</sup> *Disciplinary Board, LTO v. Gutierrez*, G.R. No. 224395, July 3, 2017, 828 SCRA 663, 669.

<sup>20</sup> *Per Curiam* Decision in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Br. 4, RTC, Butuan City, Agusan Del Norte*, A.M. No. RTJ-17-2486, September 3, 2019, p. 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 9.

All told, I find no pressing reason for the Court to now abandon the prevailing rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case. I subscribe to the long-held ratio of the Court in previous cases that a contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.<sup>23</sup> If only for reasons of public policy, the Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.<sup>24</sup>

It must be underscored as well that this general rule has its established exceptions. The Court had consistently invoked that the death of the respondent would, however, necessitate the dismissal of the administrative case upon a consideration of any of the following factors: (1) the observance of the respondent's right to due process; (2) the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and (3) depending on the kind of penalty imposed.<sup>25</sup> To my mind, these factors are already sufficient to safeguard against any unfairness that may shroud the Court's judgment in ruling against a deceased respondent. Any possibility, too, that another factor or exception may validly be taken into consideration later on by the Court is not foreclosed.

**WHEREFORE**, I concur in the dismissal of the administrative case against the late Judge Godofredo B. Abul, Jr. in view of the presence of exceptional circumstances in this case that call upon the appreciation of humanitarian considerations in his favor.



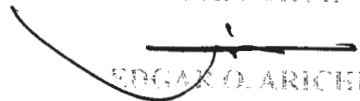
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>23</sup> *Arabani v. Arabani*, AM Nos. SCC-10-14-P, SCC-10-15-P and SCC-11-17, November 12, 2019, p. 2.

<sup>24</sup> *How v. Ruiz*, A.M. No. P-05-1932, February 15, 2005, 451 SCRA 320, 325.

<sup>25</sup> *Supra* note 17.

EXHIBIT TRUE COPY



**EDGAR O. ARICHETA**  
Chief of Court En Banc  
Supreme Court