

100 Phil. 586

[Adm. Case No. 145. December 28, 1956]

JOSEFINA MORTEL, PETITIONER, VS. ANACLETO F. ASPERAS, RESPONDENT.

D E C I S I O N

BENGZON, J.:

On March 17, 1953, Josefina Mortel complained before this Court against Attorney Anacleto F. Aspiras, alleging substantially that:

1. Sometime in August, 1952, the respondent, representing himself as single, courted her and eventually won her affection; 2. on December 22, 1952, following his instructions, she came to Manila so they could get married, and she stayed with her sister at No. 10 Espiritu, Pasay City; 3. on and after December 31, 1952, upon being assured of marriage she allowed him to live with her as her husband; 4. on January 3, 1953, a marriage license was applied for, with the son of the respondent, Cesar Aspiras, as one of the applicants; 5. upon suggestion of respondent, she was married to said Cesar Aspiras, although she was not in love with the latter; 6. after the marriage, she and respondent continued cohabiting together, the ceremony being a mere formality performed at the indication of respondent, who was a married man and who used his knowledge and education to abuse and destroy her.

On April 9, 1953, the petitioner filed a motion to “withdraw and/or dismiss” alleging that the contents of her complaint did not “represent her true sentiments”, the respondent acted in good faith, and her marriage to respondent’s son, Cesar Aspiras, was “without any fraud or deceit whatsoever”.

Believing that the matter was not a mere private affair of petitioner, but that it affected the legal profession^[1], this Court denied the motion to dismiss, and required the respondent to answer.

On May 6, 1953, the respondent made his answer, asserting that petitioner had really

married his son Cesar Aspiras, and denying having had any amorous or sexual relations with her. He also said she knew all the time he was a married man.

On May 13, 1953, the Court referred the case to the Solicitor General for investigation, report and recommendation.

On November 2, 1953, the Solicitor General reported that in view of the motion to withdraw filed by the petitioner, he found no other alternative but to recommend the dismissal of the case.

Of course, for lack of evidence, the complaint was dismissed on November 5, 1953.

However, on December 17, 1953, the petitioner filed a motion to re-open the matter, alleging that she had asked for dismissal before the office of the Solicitor General pursuant to an amicable settlement with the respondent; but that the truth was, petitioner and respondent lived together as husband and wife, from April to November, 1953 at No. 383 Int. 5 Tejeron, Sta. Ana, Manila and that as a result she was on the family way. She also charged the respondent with having ordered his son, Cesar, to live with them, for the purpose of "camouflaging their living together".

On January 5, 1954, this Court granted the above petition to re-open and referred the papers to the Solicitor General for re-investigation, report and recommendation.

After conducting the proper inquiry, and based on the evidence adduced before him, the Solicitor General filed in accordance with the Rules a complaint against the respondent, praying for his disbarment, on the ground that he seduced Josefina Mortel by a promise of marriage, and to cover up his illicit relations, he made his son, Cesar, a minor to marry the said Josefina Mortel on January 14, 1953; and, what is worse, after the marriage, the respondent continued having sexual relations with the spouse of his own son.

On May. 6, 1955, this Court ordered the respondent to reply to the official charges of the Government prosecutor. He replied in due time repeating the same denials he had previously made in this Court. Then he asked for, and was granted, a chance to introduce evidence in addition to the proofs submitted to, and forwarded by, the Solicitor General. Yet he failed to produce any.

At the oral argument he did not appear to defend himself, but asked for permission to file a memorandum— which he afterwards presented. Therein he maintains that the

complaint's allegations were not supported by the evidence, that the petitioner *is in pan delicto* and deserves no remedy, and that the alleged misconduct is not sufficient ground for disbarment.

In regard to the first point, the oral and documentary evidence at hand establish beyond reasonable doubt the following facts:

In the year 1952 Josefina Mortel, 21 years of age, single, was a teacher residing with her widowed mother in Sar wang Barrio School, Romblon, Romblon. Sometime in August, of that year she met the respondent. Atty. Anacleto P. Aspiras, an employee of the Cebu Portland Cement Co., who represented himself as single, although ne was already married to Carolina Bautista Aspiras with whom he had seven children.

A reckless Lothario, he wooed her personally and by correspondence until he finally conquered hers trusting heart. He visited her at her house and must have charmed even the mother, because without much ado she approved of him. The climax came when on a certain night of November, 1952, he was invited to stay and spend the night at her house, due to a typhoon which was raging. About 3 or 4 a.m., while the mother was in the kitchen, he crept into Josefina's room and after glibly promising marriage, succeeded in seducing her. From that time on, and without the benefit of marriage she gave him the privileges of a husband. Thereafter yielding to his invitation, Josefina came to Manila in December, 1952, for the purpose of marrying him, despite her mother's desire to have the marriage celebrated the following month of April, so as to enable her to continue teaching until the end of the school term. She stayed with her sister at 10 Espiritu Street, Pasay City.

Accompanied by the respondent, she went on January 3, 1953 to the Manila City Hall, where for the first time, she met his son Cesar, who was introduced (by respondent) as his nephew, and her bridegroom-to-be. She says respondent again told her to follow his "instructions", and left the two of them (with Atty. Espino) at the City Hall. He then departed for Cebu. She filled up the application for marriage (Exhibits 7, 8, Respondent) and wrote the name of Cesar as her husband-to-be.

In connection with the above "instructions", it is probable that before filing the application Josefina discovered or was told that respondent was a married man. But she was persuaded by respondent to enter into a sham marriage with his "nephew" Cesar, so that she may rightfully claim to be *Mrs. Josefina Aspiras* and save her face before her relatives and acquaintances who had known her amorous relations with Attorney Aspiras.

Accordingly on January 14, 1953, Josenna and Cesar were married^[2] at the Manila City Hall before Judge Aragon, with the respondent and Rosario R. Veloso (Cesar's aunt) as witnesses. After the ceremony, the two contracting parties separated, never to live together as husband and wife. However, the respondent continued up to November, 1953 his adulterous relations with Josenna, as a result of which she gave birth to a baby boy on January 24, 1954.

Josefina's sworn testimony that herein respondent pretended to be single and promised marriage, is confirmed by his love letters, portions of which say:

"* * * You are alone in my life till the end of my years in this world * * * I will bring you along with me before the altar of matrimony * * *." (Exhibit A-6, September 22, 1952.)

"Through thick and thin, for better or for worse, in life or in death, my Josephine you will always be the first, middle and the last in my life. In short, you will be the only woman to me as I used to say to you." (Exhibit A, November 2, 1952.)

And her testimony that after her marriage to Cesar she continued living, as wife, with herein respondent is borne out by his letters to Josefina's mother dated February 9, 1953 and March 6, 1953—Exhibits A-19 and A-21.

Obviously the courtship and seduction by respondent was morally wrong, and this obliquity became worse when he made use of his minor son Cesar to "redeem" his promise of marriage and/or to cover up his illicit relations, as the Solicitor General alleged. He corrupted his own descendant by turning him into an accomplice of his marital infidelities.

But he says, the marriage was a true marriage, the contracting parties being actually in love with each other. Granted. Then his moral delinquency becomes all the more unpardonable: he cohabited with the wife of his own son *after the marriage* which he himself arranged and witnessed.

It is immaterial that Josefina Mortel the complainant was also at fault—in *pari delicto*, respondent suggests—because this is not a proceeding to grant her relief, but one to purge the profession of unworthy members, to protect the public and the courts^[3]. So much so that even if she should presently ask for dismissal, the matter may not be dropped, the

evidence at hand being sufficient to warrant disciplinary action. Anyway, *pari delicto* is not always a complete defense.^[4]

Supposing that respondent's conduct is not one of those mentioned in the Rules for which an attorney may be disbarred,^[5] still, in this jurisdiction, lawyers may be removed from office on grounds other than those enumerated by the statutes. (In re Pelaez, 44 Phil. 567.) And we recently applied that principle in *Balinon vs. De Leon*, 50 Off. Gaz., 583.

In the United States where from our system of legal ethics derives, "the continued possession * * * of a good moral character is a requisite condition for the rightful continuance in the practice of the law * * * and its loss requires suspension or disbarment, even though the statutes do not specify that as a ground for disbarment." (5 Am. Jur. 417.)

As stated by Mr. Justice Owen, of the Wisconsin Supreme Court,

"One of the requisite qualifications for one who holds the office of an attorney at law is that he or she shall be of good moral character, in so far as it relates to the discharge of the duties and responsibilities of an attorney at law. This is a continuing qualification necessary to entitle one to admission to the bar, and the loss of such qualification requires his suspension. The respondent is a member of the bar of this court. The charges preferred against him challenge his moral integrity. Just as it was the duty of this court to refuse him admission in the first instance upon a showing that he lacked the necessary qualifications, so is it its duty now to remove him upon like proof." (Re Stolen, 193 Wis. 602; 55 A. L. R. 1361.)

Perhaps mere moral transgression not amounting to crime will not disbar, as some cases hold^[6] and on this we do not decide. But respondent's moral delinquency having been aggravated by a mockery of the inviolable social institution of marriage, and by corruption of his minor son or destruction of the latter's honor, the undersigned all agree he is unfit to continue exercising the privileges and responsibilities of members of the bar.^[7]

Wherefore it becomes the duty of this Court to strike, as it does hereby strike his name from the Roll of Attorneys. So ordered.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and

Felix, JJ., concur.

^[1] Proceeding may be taken for removal of attorney by the Supreme Court on its own motion. (Section 1, Rule 128.)

^[2] Went through the motions of a marriage ceremony.

^[3] That is why Solicitor General intervenes.

^[4] Cf. *Bough vs. Cantiveros*, 40 Phil. 209.

^[5] Concubinage is not considered now, because his wife has not complained, and no criminal conviction has been obtained.

^[6] See *People vs. Smith*, 9 A. L. R. 183 (111.) and note at page 202.

^[7] See 7 C. J. S. p. 735.
