

EVELYN AGPALASIN, COMPLAINANT, VS. JUDGE EMERITO M. AGCAOILI, RESPONDENT.

A.M. No. RTJ-95-1308. April 12, 2000

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PER CURIAM:

This treats of the administrative case against Judge Emerito Agcaoili of Branch 9 of the Regional Trial Court of Aparri, Cagayan.

The antecedents of this case are summarized by the Investigating Justice as follows:

Respondent filed a complaint-affidavit dated September 4, 1992 for estafa at the Municipal Trial Court (MTC) of Aparri against complainant for allegedly shortchanging him of 200 nipa shingles from [the] 5,500 he had purchased from her on May 8, 1991 which he fully paid on May 21, 1991.

Answering the estafa charge against her, complainant filed her Counter-affidavit wherein she not only denied the same but also charged respondent with the following offenses:

(a) falsification under Article 172, paragraph 1, of the Revised Penal Code for allegedly making an untruthful statement in the affidavit-complaint which became the basis for the charge of estafa in the aforestated criminal case;

(b) incriminating an innocent person under Article 363 of the same code for allegedly maliciously accusing complainant of estafa; and

(c) violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) for ordering or allowing a man with a pending criminal case before him ([whom] he eventually acquitted) to receive, transport and pay for the fare of the 5,500 shingles of nipa ordered by him from complainant and for allegedly constructing illegally a poultry within the compound of Cagayan State University which is a government property.

A copy of complainant's said counter-affidavit to the estafa charge was sent by her to the Cagayan Provincial Prosecutor's Office with the request that a preliminary investigation of her charges against respondent be conducted.

A three-man panel of deputized Ombudsman Prosecutors was designated to conduct an investigation of complainant's charges. After initially investigating the charges, the three members of the panel inhibited themselves from further proceeding with the investigation, giving as reason therefor the fact that one of their colleagues at the Cagayan Provincial Prosecutor's Office, Asst. Provincial Prosecutor Apolinario Carrao, had filed administrative charges against respondent at the Supreme Court.

The Cagayan Provincial Prosecutor's Office thus referred the complaint to the Office of the Ombudsman for the conduct of the preliminary investigation.

After investigation, the Office of the Ombudsman found that a determination of whether or not the affidavit-complaint of herein respondent in the estafa case is falsified was still premature and thus held in abeyance any action on the criminal aspect of the case against him until after the termination of the estafa case. It,

however, referred the record of the case to the Office of the Court Administrator for appropriate administrative action.[1]

In a Resolution, dated June 26, 1996,[2] the Court referred the case to Justice Conchita Carpio-Morales of the Court of Appeals for investigation, report and recommendation. Respondent Judge is charged with:

- (a) ordering or allowing the accused in Criminal Case No. 09-594 to receive, transport and pay the fare for 5,500 nipa shingles for respondent Judge's benefit and subsequently acquitting the accused therein; and
- (b) illegally constructing a poultry within the compound of the Cagayan State University, a government property located at Carig, Tuguegarao, Cagayan.[3]

The Court received Justice Carpio-Morales' Report on May 21, 1998. Justice Carpio-Morales summarized the evidence for both the complainant and respondent Judge, thus:

EVIDENCE FOR COMPLAINANT

x x x

In early May 1991, while complainant was tending her business selling nipa shingles at a landing site near Branch 9 of RTC Aparri, Cagayan, a male employee of respondent approached her informing her that respondent wanted to purchase nipa shingles from her to be used in the construction of respondent's poultry house inside the Cagayan State University (CSU) in Carig, Tuguegarao, Cagayan. She thereupon went to the CSU to estimate the number of shingles needed for the poultry house. She then conveyed to respondent that 5,500 shingles were needed and respondent approved it and agreed to buy them at a discounted price of P70.00 per hundred [shingles] payable upon segregation, freight on board Aparri, Cagayan.

Complainant and her salesman/helper Vicente Umengan (Umengan) thus segregated 5,500 nipa shingles in the presence of respondent's male representative.

On May 10, 1991, respondent, through RTC Branch 9 stenographer Violeta Bigayan (Violeta), gave two P500.00 bills or a total of P1,000.00 as advance payment to complainant's employee Umengan, complainant not being then around.

On May 11, 1991, a Saturday, complainant together with Umengan went to respondent's chambers to collect the balance of the purchase price and [to] advise him to pick up the nipa shingles as the owner of the compound where they were temporarily stacked-up was already complaining. [Inside] respondent's chambers, complainant was introduced by respondent to Sixto Bumatay (Bumatay) who was then facing trial for robbery along with five others before respondent's court, and to Bumatay's counsel Atty. Juan Antonio (Atty. Antonio). Complainant was then instructed to deliver the nipa shingles to either of the two men with the advice that Bumatay would take charge of the payment of the balance of the purchase price.

In the morning of May 13, 1991, upon her return from Pangasinan, complainant called for an FC, Liner minibus and loaded the nipa shingles in the presence of Bumatay. While the loading was in progress, Atty. Antonio and Umengan arrived. Atty. Antonio, however, let before the loading was finished as Bumatay assured him that he would take care of everything. After the loading was finished, Bumatay handed to complainant P385.00 representing the freight charges of the nipa shingles which she in turn gave to the driver of the bus. Complainant then asked about the balance of the purchase price, and Bumatay replied that respondent himself would pay it upon delivery of the nipa shingles at the CSU compound in Tuguegarao.

In view of that development, complainant instructed her secretary Arsenia Casilian. (Arsenia) to personally deliver the nipa shingles at the CSU compound at Tuguegarao and collect the balance of the purchase price amounting to P2,850.00 from respondent.

Upon arriving at the CSU compound, the nipa shingles were unloaded in the presence of respondent and a man

who assisted in the unloading. Respondent then issued a Metrobank (Tuguegarao Branch) check for P2,850.00 to Arsenia who gave it to complainant upon returning to Aparri. The check, however, when presented for-payment, was dishonored due to insufficiency of funds, and on redeposit, it was just the same dishonored for the same reason.

On May 21, 1991, complainant went to respondent's office to inform him of the dishonor of the check (Respondent admitted that this check was dishonored). x x x. Respondent immediately issued another check, Land Bank (Tuguegarao Branch) Check No. 1743842, for the same amount. On the same occasion, respondent ordered additional 2,300 nipa shingles x x x at P90.00 per hundred from complainant partial advance payment for which he issued another Metrobank (Aparri Branch) check in the amount of P1,600.00.

In the morning of May 25, 1991, complainant shipped from Aparri, Cagayan 8,500 nipa shingles to Tuguegarao, Cagayan via a Malamug Trans bus with instruction to its driver, Benedict Cosme Malamug (Malamug), to unload 2,300 thereof at the poultry house of respondent inside the CSU compound and to collect from respondent the corresponding fare and the balance of the purchase price of the nipa shingles.

After several days, an employee of respondent went to complainant and asked her why she had not yet delivered the second order of 2,300 nipa shingles. This drew complainant to confront Malamug who told her that the nipa shingles were not unloaded at the CSU compound as nobody there wanted to receive the same and pay for the corresponding fare, hence, the entire batch of 8,500 nipa shingles was unloaded at the yard of one Freddie Llanto. Complainant thus caused the immediate delivery of the 2,300 nipa shingles to respondent.

More than one month after the delivery, of the 5,500 shingles or on June 25, 1991, complainant was summoned by respondent to his chambers where he berated her for shortchanging him, so he alleged, of 200 nipa shingles out of the said order of 5,500. Jolted, complainant tried to explain her side but respondent did not [give] her a chance and bragged that he could easily put her in jail. Certain that she did not defraud respondent, complainant challenged him to sue her in court.

It occurred to complainant to inquire about the second shipment for 2,300 shingles from Malamug who explained that the caretaker of the poultry house of respondent could not pay for the freight charges and the balance of the purchase price therefor, hence, he unloaded only 1,600 shingles and retained the rest. In the meantime, respondent rendered a decision in Criminal Case No. 09-594 dated August 9, 1991 acquitting Bumatay and his co-accused upon a finding that their guilt was not proven beyond reasonable doubt.

Almost four (4) months from the date of delivery of the 5,500 shingles ordered by respondent or on September 10, 1991, respondent filed a case for estafa against complainant before the MTC of Aparri, Cagayan arising from the alleged shortchanging of 200 shingles.

In a decision dated June 16, 1993, the MTC of Aparri acquitted complainant of estafa.

EVIDENCE FOR RESPONDENT:

RESPONDENT'S testimony goes:

Anent the first charge, the same is not true for it is his policy as a judge not to ask any favor from anybody as he knows that it would have to be repaid with another favor.

Anent the alleged meeting at his chambers on May 11, 1991 during which he introduced Bumatay and Atty. Antonio to complainant and told her that Bumatay or Atty. Antonio would pay for the fare of the 5,500 nipa shingles, the same is not also true as it has been his policy since his appointment in 1990 not to allow the entry of, summon or talk with any litigant or his lawyer inside his chambers without the presence of the other party. Besides, May 11, 1991 fell on a Saturday and was Aparri's town fiesta and he could not have been in his office on that day as he goes to his residence which is "not far from Aparri" every weekend.

Moreover, he never had any conversation with complainant except during that only instance when he

demanded from her the delivery of the 200 nipa shingles which occurred only sometime "after May 11, 1991, or May 13 or May 15".

He did not know about the participation of Bumatay and/or Atty. Antonio in the shipping of the nipa shingles to Tuguegarao although he later came to know about Atty. Antonio's participation when he asked stenographer Violeta several days after May 13, 1991 what happened to the nipa shingles to which she informed that it was Atty. Antonio who paid in advance for the freight charges therefor. Thus informed, he immediately issued a Pay to Cash Metrobank (Aparri Branch) check in the amount of P530.00 and handed it to Violeta for delivery to Atty. Antonio representing reimbursement of the freight charges, which amount was arrived at by him by estimating the freight charges to be at ten (P.10) centavos per shingles (TSN July 16, 1996, p. 24).

His acquittal of Bumatay in the robbery case was due to the prosecution's failure to prove the guilt of Bumatay beyond reasonable doubt and not as insinuated in the complaint.

Anent the second charge, there is nothing wrong in the construction of the poultry house inside the compound of the CSU as the same is covered by a Memorandum of Agreement (Exhibit "4") executed by and between his wife, Mrs. Norma Agcaoili, and CSU's President, Dr. Armando B. Cortes, which agreement was duly ratified by the University's Board of Regents.

To corroborate part of his testimony, respondent presented stenographer Violeta, Atty. Juan Antonio, retired Judge Felipe Tumakder, and Dominador Tamayao whose respective testimonies follow after their names.

VIOLETA BIGAYAN-TORIDA, Court Stenographer III of Branch 9, RTC Aparri, Cagayan:

On May 13, 1991, while she was at the nipa shingles landing site following the directive of respondent for her to look for a vehicle to ship the nipa shingles bought by Mrs. Agcaoili at Aparri to their poultry house in Tuguegarao, she saw Atty. Antonio whose help for the purpose she sought. Atty. Antonio at once told her that he knew of a booking agent who could provide her with the transportation and assured her that he would take charge of the shipment. With that assurance, she left the matter to Atty. Antonio. She was not able to tell respondent, however, about the help extended her by Atty. Antonio as respondent had not yet arrived that day. After several days, Atty. Antonio advised her that the nipa shingles were already shipped to Tuguegarao and that he had already paid for the freight charges amounting to P530.00.

She later told respondent about the shipping of the nipa shingles by Atty. Antonio and respondent issued her a Pay to Cash Metrobank check bearing the aforesaid amount which she gave to Atty. Antonio.

She never saw Bumatay, Atty. Antonio or the complainant in the company of respondent on May 8, 11 and 13, 1991. Complainant could not have met respondent, Bumatay and Atty. Antonio at respondent's chambers on May 11, 1991 as there was no one who held office that day, it being a Saturday and Aparri's town fiesta.

On cross examination, she admitted that Atty. Antonio told her that it was his client, Sixto Bumatay, who shipped the nipa shingles to Tuguegarao but that she was unable to tell the same to respondent up to the time she was testifying (Bumatay in an affidavit dated September 24, 1992 x x x admitted having supervised the loading of the 5,500 nipa shingles, in his capacity as booking Agent of the FC Liner, and of paying for the freight thereof at P7.00 per 100 pieces or a total of P385.00).

ATTY. JUAN ANTONIO, a private practitioner and Sixto Bumatay's counsel in the robbery case:

He was not present when the 5,500 nipa shingles were being loaded on board the FC Liner bus on May 13, 1991. On that particular day, he attended the morning session held at Branch 9 of the RTC Aparri presided by respondent which started at 8:30 o'clock [sic]. He left Branch 9 at about 10:30 o'clock [sic] that same morning and proceeded to Branch 7 which is about 150 to 200 meters away.

On his way to Branch 7, he saw Violeta, whom he knew to be Branch 9's stenographer, by the road fronting the nipa landing site. Surprised to see her there as the session in Branch 9 was still going on, he asked her why she

was there to which she replied that she was waiting for a bus to load nipa shingles bound for Tuguegarao.

Motivated by his desire to help her, he advised Violeta that she could not expect a bus to pass by that spot where she was as buses were prohibited from entering commercial streets unless specifically called for by prospective customers. He thereupon told her that if she wished, he would instruct his client, Sixto Bumatay, who is a booking agent of FC Liner, to instruct a bus driver to pick-up the nipa shingles from the place and also to advance the freight charges therefor which she could reimburse later. Violeta heeded his suggestion.

He then dropped by Bumatay's place and instructed him to have an FC Liner bus pick-up Violeta's cargo and to advance the corresponding freight therefor which she would later reimburse.

After about six or eight days later (TSN June 28, 1996, p. 179) when he was in Branch 9 of the Aparri RTC, he saw Violeta who handed to him a check representing the reimbursement of the freight charges which Bumatay advanced, the amount written on the face of which he could no longer remember. And he did not inspect the check to see against which bank it was drawn or who drew it for he presumed that it was Violeta's whom he likewise presumed owned the nipa shingles.

It was only when he went to court on or before May 20, 1991 that he was told that a certain lady (complainant) was complaining to the judge about the payment of the subject nipa shingles that he learned that respondent owned the same.

JUDGE FELIPE TUMAKDER (RET.), former judge of the RTC of Aparri, Cagayan.

He notarized the Memorandum of Agreement executed by and between respondent's wife, Mrs. Norma Agcaoili, and CSU represented by its president, Dr. Armando Cortes, which document was already prepared when presented to him by the parties thereto on a certain date which he could no longer remember.

Admitting that he certified to the fact that a photocopy of the memorandum (Exhibit "4", p. 154, Rollo) was a reproduction of the original, he could not, however, declare that such photocopy was indeed a faithful reproduction of the original as he could not locate his notarial records and the original copy of respondent was never shown to him when he signed the certification in issuing which he merely relied in good faith on his clerk who prepared it.

DOMINADOR O. TAMAYAO, Director of Extension of CSU, who testified in lieu of Dr. Armando Cortes-signatory to the memorandum of agreement who was unavailable at the time he was called to testify on June 27 and 28, 1996:

He has personal knowledge about the lease agreement between the university as represented by Dr. Cortes and Mrs. Agcaoili, he being a member of the technical committee which studied the technical aspect of the project subject thereof. He admitted, however, that he had no participation in the execution of the documents relating thereto which were subject of the subpoena duces tecum as he was not the custodian thereof.

REBUTTAL EVIDENCE

ARSENIA CASILIAN, complainant's secretary:

On May 13, 1991, she was sent by complainant to Tuguegarao via an FC Liner bus to deliver the 5,500 nipa shingles at CSU compound in Tuguegarao and to collect the balance of the purchase price in the amount of P2,850.00 from respondent.

After delivering all the 5,500 x x x nipa shingles in the presence of respondent at the CSU compound, respondent handed to her a Metrobank check in the amount of P2,850.00 which she in turn gave to complainant upon her return to Aparri.

During the loading of the nipa shingles, she was with Atty. Antonio, Sixto Bumatay, Vicente Umengan and complainant at the nipa landing site and she saw Bumatay pay for the freight charges of the nipa shingles.[4]

The Court has pored over the records of this case and finds the foregoing summary of the evidence to be consistent therewith. The Court also agrees with the following assessment of the Investigating Justice:

I. On the first charge:

There is no evidence on record that respondent acquitted Sixto Bumatay in the robbery case by reason of the favor he extended towards the respondent.

The undersigned is convinced, however, that respondent directed or allowed Sixto Bumatay and Atty. Antonio to take charge of the shipping of the nipa shingles he purchased from complainant and to let Bumatay pay for the freight thereof.

Respondent and his witnesses' version do not inspire credence.

Respondent's witness Violeta Bigayan is a trusted employee. She was, by the defense[']s account, the one sent by respondent to arrange for the shipping of the 5,500 nipa shingles to Tuguegarao, to pay to complainant, thru Vicente Umengan, the advance payment of P1,000.00 therefor, and to deliver the alleged reimbursement check to Atty. Antonio. At the time Violeta took the witness stand on July 16, 1996, she was still a court stenographer at respondent's sala, hence, still under the latter's moral ascendancy. For these reasons, her likelihood of telling the truth becomes seriously suspect.

Atty. Antonio's objectivity, on the other hand, is betrayed by his close association with respondent. At the time complainant was instructed by respondent at the latter's office to deliver the nipa shingles to either Atty. Antonio or Bumatay on May 11, 1991, the two were present. Atty. Antonio at one point during the pendency of this case at the Office of the Ombudsman even served as respondent's counsel (vide: Exhibit "14", Rollo, pp. 211-212) which likely accounts for his bias towards respondent.

Atty. Antonio's testimony that he presumed that the shingles belonged to Violeta contradicted the latter's claim that she told him to ask at the nipa landing site about the nipa shingles "bought by Mrs. Agcaoili". Besides, Atty. Antonio's claim that he did not bother to ask Violeta regarding the ownership of the nipa shingles and that he never bothered to check or peruse the Metrobank check given by her is not in accordance with the ordinary course of things and human experience.

Violeta's claim that she was sent by respondent to look for a bus to ship the nipa shingles without him giving her money to pay for the freight thereof, that she without respondent's knowledge asked Atty. Antonio to facilitate the transportation of the said nipa shingles without her bothering to tell Atty. Antonio from whom he would secure the nipa shingles and to whom and to which area in Tuguegarao they would be delivered, and that she only learned after several days that the nipa shingles were already transported are incredible. How could Atty. Antonio have known from whom, among the vendors operating in the nipa landing site, to secure/claim the 5,500 nipa shingles and to whom he would deliver them in Tuguegarao if Violeta did not advise him about it [?] And if it were really true that Violeta was asked by respondent to look for a vehicle to ship the shingles, it is incredible that she would not immediately verify whether or not they were actually shipped by Atty. Antonio or Bumatay. For if respondent had asked her whether or not she complied with his order, what concrete answer would she give?

In fine, the testimonies of the above-named witnesses for respondent are not credible.

Violeta and Atty. Antonio's testimonies thus discredited, respondent is left with his own testimony to rely on to rebut complainant's accusations.

Respondent's testimony, however, like the testimonies of his said two witnesses, does not persuade.

His feigned ignorance of Bumatay's and Atty. Antonio's participation in the loading of the nipa shingles and in the payment of the freight charges therefor cannot prevail over the positive assertion of complainant that he

himself told her on May 11, 1991 to deliver the nipa shingles to either Bumatay or Atty. Antonio.

Complainant's testimony about her having [been] instructed by respondent on May 11, 1991 to deliver the shingles to either Bumatay or Atty. Antonio is being questioned by respondent as being in contradiction with what she stated in her counter-affidavit-complaint-affidavit (Exhibit "A").

The contradiction between complainant's assertion during her testimony at the witness stand and her statement in her counter-affidavit is more apparent than real. The instruction for Umengan to deliver the nipa shingles to either Bumatay or Atty. Antonio was given by an employee of the court (Violeta) on May 10, 1991 following Violeta's delivery to Umengan of the advance payment of P1,000.00. The instruction of respondent to complainant for her to deliver the nipa shingles to either of the duo was given a day after, i.e., on May 11, 1991. There was thus no contradiction. What is thus apparent is that the instruction given by respondent to complainant on May 11, 1991 was just a reiteration or confirmation of the instruction given on May 10, 1991 by respondent's stenographer Violeta to complainant's employee Umengan.

That May 11, 1991 was a Saturday and Aparri's town fiesta does not render complainant's testimony worthless and unreliable. On the contrary, it would even strengthen her claim, for were we to believe respondent's claim that he never receives litigants or their lawyers inside his chambers, it is very likely, that the meeting took place on that non-working day to avoid people around, who might be knowledgeable about the pendency of Bumatay's case in his sala, seeing respondent in the company of Bumatay and Atty. Antonio. Impropriety is known to be usually done in secret. Besides it is not unlikely that respondent was in Aparri to attend the town fiesta.

What renders respondent's claim of ignorance about Atty. Antonio's participation even more incredible is his claim that he came to know of the alleged participation of Atty. Antonio in the shipping of his nipa shingles only "several days" after the May 13, 1991 when he asked Violeta what happened to them. Such claim defies logic and reason. Under normal circumstances, an ordinary person prudent enough to take ordinary care of his business or any concerns or interests would not allow a day [to] pass without wanting to know what happened to an undertaking - like shipping of 5,500 nipa shingles - he entrusts to a subordinate.

As a judge, respondent is presumed to know that it is unlawful and improper to receive any kind of favor from litigants or their counsel in whatever form it may be given. Yet, on being allegedly informed of the shipping by Atty. Antonio of the shingles and of his advancing of the freight charges, he did not ask Violeta why x x x. He just readily issued an alleged reimbursement check.

A careful scrutiny of the alleged reimbursement check (Exhibit "10") dated June 4, 1991 and purportedly deposited for payment on June 11, 1991, however, convinces the undersigned that the issuance of the same was an afterthought intended to exculpate respondent. Why was the check made payable to "cash" and not to the order of Atty. Antonio who, per information of Violeta, paid for the freight[?] Why was P530.00 written on the face of the check if, by respondent's own estimate, the freight charge is P.10 per shingle and, therefore, the total amount should be P550.00? Since Bumatay claims to have paid only P385.00, why the acceptance and presentation of the check for payment? And why should Atty. Antonio's signature appear on the Pay to Cash check when Bumatay could encash it himself and needed no guarantor for the purpose[?] Such is only reflective of the panic attendant to the exposure of respondent's receipt of favor from a litigant. Finally, if as Atty. Antonio claimed he was handed the reimbursement check "six or [eight] days" after May 13, 1991 when the shingles were shipped to Tuguegarao or at the latest on May 21, 1991, was respondent so financially strapped that he had to postdate to June 4, 1991 the P530.00 check?

II. On the second charge:

Respondent's defense is that the use of the lot located inside the CSU compound in Tuguegarao where he constructed his poultry house is covered by a memorandum of agreement-contract of lease executed by his wife and Dr. Cortes duly approved by the Board of Regents of CSU.

The persons presented by respondent supposedly to identify and authenticate the documents bearing on the lease turned out to be unreliable. Notary public Judge Tumakder who issued a certification that the memorandum of agreement was a true copy (Exhibit "4", p. 154, Rollo) admitted never seeing the original or copy thereof when he made the certification as his own file copy was missing and the file copy of either the CSU or Mrs. Agcaoili was never presented to him when he issued the certification. On the other hand, Mr. Tamayao of CSU admitted that he had no hand in the execution of the photocopied documents he brought with him as he is not the official custodian thereof.

Respondent of course later produced an alleged carbon original of the memorandum of agreement (Exhibit "12-j") leasing a portion of the CSU property for a period of ten (10) years commencing on April 1, 1991, which document appears to have been notarized on July 1, 1991 and, per certification of therein signatory CSU President Dr. Cortes, ratified by the Board of Regents on October 14, 1991. As reflected in the undersigned's comment during the investigation, however, (TSN July 16, 1996, p. 12), and in complainant's counsel's cross-examination of respondent, the said document-Exhibit "12-j" contains handwritten entries in different ink - colored ballpens, original and over carbon paper typewritten entries, and corrections/super-impositions over snow-fake [sic] portions.

But even assuming that the document covering the alleged lease is genuine, it would appear that at the time the construction of the poultry house started in May 1991 when the nipa shingles were delivered, the use of the lot on which it was being constructed was not yet covered by a valid and binding contract. For the Memorandum of Agreement between CSU and his wife was executed only on July 11, 1991 and was allegedly ratified by the CSU Board of Regents only on October 14, 1991.[5]

On the basis of the foregoing, the Investigating Justice recommends that, as regards the first charge, respondent Judge be dismissed for gross misconduct.

Prescinding from the above disquisitions, the undersigned finds that respondent's proven act of having ordered or allowed Sixto Bumatay, an accused in a robbery case pending in his sala, to transport and pay for freight charges of 5,500 nipa shingles, constitutes gross misconduct.

Respondent thus failed to live up to the norm that a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary (Rule 2.01, Canon 2, Code of Judicial [C]onduct). He openly transgressed the rule that a judge (or any immediate member of the family) shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law (Rule 5.04, Canon 5, Code of Judicial Conduct).

A magistrate must comport himself at all times in such a manner that his conduct, official and otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. (In re: Judge Benjamin H. Virrey, 202 SCRA 628, 634 [1991]). He, as it has often be[en] said, is like Ceasar's Wife, and like her, he must be above suspicion and beyond reproach (In re: Judge Benjamin H. Virrey, Ibid.).[6]

The recommendation is well taken.

The Code of Judicial Conduct mandates that a judge should be the embodiment of competence, integrity, and independence.[7] He should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary,[8] and avoid impropriety and the appearance of impropriety in all activities.[9] His personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for he is, as he so aptly is perceived to be, the visible personification of law and of justice.[10]

Regrettably, respondent Judge has failed to live up to these standards. His act of allowing a litigant in his sala to pay for the freight of his personal acquisitions constitutes a blatant violation of Rule 5.04, Canon 5 of the Code of Judicial Conduct prohibiting judges from accepting a gift, bequest, favor or loan from anyone except as may be

allowed by law. Judge Agcaoili thereby degraded the administration of justice, mocked the dignity of his office, and cast doubt on the independence and integrity of the entire judiciary.

That the accused who indulged respondent Judge's corrupt tendencies was subsequently acquitted further gives rise to suspicions that the judge was influenced by the favors the accused extended to him. It gives the impression that the judge was swayed by factors other than the evidence on record, that he arrived at the decision of acquittal other than by his own independent judgment.

A judge should, in pending or prospective litigation before him, be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course.[11] He must not only render a just, correct and impartial decision but should do so in such a manner as to be free from any suspicion as to his fairness, impartiality and integrity.[12] A decision which correctly applies the law and jurisprudence will nevertheless be subject to questions of impropriety when rendered by a magistrate or tribunal believed to be less than impartial and honest.[13]

As regards the allegedly illegal construction of a poultry house in the premises of the Cagayan State University, the Court, however, like the Investigating Justice, is inclined to give respondent Judge the benefit of the doubt in view of the lease agreement subsequently executed between the University and respondent's wife. In any event, the second charge has been rendered moot by the penalty of dismissal this Court is about to impose upon respondent for the first charge.

Indeed, this is not the only instance that respondent Judge has committed a transgression of judicial ethics. In *Chan vs. Agcaoili*,^[14] this Court found respondent guilty of simple negligence resulting in non-compliance with Canon 2, Rule 2.01 of the Code of Judicial Conduct. In said case, Judge Agcaoili failed to issue a warrant of arrest against an accused who had jumped bail. His omission merited from this Court a reprimand and a warning that a repetition of similar acts or omissions in the future will be dealt with more severely.

In *Cortes vs. Agcaoili*,^[15] this Court found respondent guilty of three infractions.

First, respondent Judge was found guilty of gross ignorance of the law when he ordered the release of confiscated forest products to a person who had derived his title from another who had no license, permit or authority to possess the same, in utter disregard of the provisions of Section 78 of the Revised Forestry Code.

Second, respondent Judge was found guilty of improper grant of bail. He issued an order granting bail without a recital of any evidence presented by the prosecution, making such order defective in form and substance. Moreover, the grant of bail was unjustified since no document was submitted to support the submission that the accused was ill and suffered brain injuries.

Third, the Court ruled that respondent Judge was guilty of fraternizing with litigants in violation of Canon 2 of the Code of Judicial Conduct.

For these infractions, the Court imposed upon respondent Judge a fine of P20,000.00 for ignorance of the law and another P20,000.00 for the improper grant of bail. Respondent was also suspended for ten days, since it was his second infraction of the rules on bail, the first being in *Chan v. Agcaoili*.^[16] The Judge was, likewise, reprimanded for fraternizing with litigants. Finally, the Court warned respondent that a repetition of the foregoing or similar transgressions shall be penalized much more severely.

Thus, respondent Judge has habitually flouted judicial ethics and betrayed judicial standards. By his own actions and omissions, he has shown he does not deserve the honor of his office. On this occasion, therefore, the Court metes upon respondent the severest of administrative penalties. He is, hereby, stripped of his robes.

WHEREFORE, Judge Emerito M. Agcaoili is hereby DISMISSED from the service for gross misconduct. The Court hereby orders the FORFEITURE of all retirement benefits to which he may be entitled with prejudice to REEMPLOYMENT in the government service, including government-owned or controlled agencies or corporations. This is WITHOUT PREJUDICE to any other action that may be properly taken against him for possible violation of, among other laws, the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019, as amended).

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Bellosillo, J., no part. Did not take part in deliberations.

Vitug, J., on official leave.

[1] Report, pp. 1-3.

[2] Rollo, p. 119.

[3] Ibid.

[4] Report, pp. 3-12. Underscoring in the original.

[5] Id., at 12-17. Underscoring in the original.

[6] Id., at 18.

[7] Canon 1, Rule 1.01.

[8] Code of Judicial Conduct, Canon 2, Rule 2.01.

[9] Code of Judicial Conduct, Canon 2.

[10] Marcelino vs. Singson, Jr., 243 SCRA 685 (1995).

[11] Canons of Judicial Ethics, Canon 30; Cortes vs. Agcaoili, 294 SCRA 423 (1998); Marces, Sr. vs. Arcangel, 258 SCRA 503 (1996).

[12] Maliwat vs. Court of Appeals, 256 SCRA 718 (1996).

[13] Nazareno vs. Almario, 268 SCRA 657 (1997).

[14] 233 SCRA 331 (1994).

[15] 294 SCRA 423 (1998).

[16] Supra note 14.

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