

THE COURT ADMINISTRATOR, COMPLAINANT, VS. RODOLFO G. HERMOSO, JUDGE, REGIONAL TRIAL COURT, BRANCH 168, PASIG, METRO MANILA AND ROMULO FLORES, DEPUTY SHERIFF, RESPONDENTS.

Adm. Matter No. R-97-RTJ. May 28, 1987

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PER CURIAM:

These are two administrative cases against Judge Rodolfo G. Hermoso, formerly presiding judge of Branch 168, Regional Trial Court with station at Pasig, Metro Manila. The first (AM No. R-97-RTJ) was based on the filing against him of a criminal complaint by the Tanodbayan for alleged violation of Section 3 of the Anti-Graft and Corrupt Practices Act.[1] Included in this charge was the other respondent, Romulo Flores, his deputy sheriff. The second (AM No. 2656) is a complaint for disbarment against the said judge, based on the same case filed with the Sandiganbayan.[2]

Upon being charged in the Sandiganbayan, both Hermoso and Flores were preventively suspended by that court. A similar measure was taken by this Court, which also ordered them to comment on the information filed against them.[3] After they had filed their comment[4] as required, the Court referred this administrative charge to Justice Lorna Lombos de la Fuente of the Court of Appeals for con-solidation with the disbarment case previously referred to her, also for investigation, report and recommendation.[5]

Meanwhile, after reinvestigation of the case in the Sandiganbayan, the Tanodbayan moved for dismissal on the ground of insufficient evidence.[6] The motion was granted "without prejudice," and the accused were ordered rein-stated and declared entitled to all back salaries and emoluments, "unless in the meantime administrative proceedings have been filed against them."[7]

On February 18, 1986, Judge Hermoso filed a motion with this Court to lift his suspension in view of the dismissal of the case against him by the Sandiganbayan.[8] The Court resolved instead to await the outcome of the investigation being then conducted by Justice dela Fuente.

The above-stated cases stemmed from a charge of bribery allegedly committed by the respondent judge and his deputy sheriff in connection with a civil case decided by the former entitled "Lilian Cabrera Ang v. Jimmy Yu." Lilian Cabrera Ang, complainant in this administrative case and the graft case before the Sandiganbayan, was one of the plaintiffs and Lourdes Nieva, co-complainant in AM No. R-97-RTJ, was one of the defendants in that civil case.

According to the complainants, a default judgment was rendered by the respondent judge on February 9, 1984, ordering the defendants to pay the plaintiffs the sum of P75,000.00 plus interest and P5,000.00 attorney's fees.[9] However, the parties later entered into a compromise agree-ment but the respondent judge refused to approve the same and to release the payloader earlier seized on preliminary attachment which the plaintiffs were willing to accept in full satisfaction of their claim.

Release of the payload, according to them, was conditioned by the judge on the payment to him of P7,500.00, representing 5% of the equipment, which cost P150,000.00. After haggling, the complainants were able to persuade him to accept P5,000.00 instead of selling the payload at public auction, as he had threatened. The complainants promised to deliver this amount to the respondent judge, but instead they reported the matter to Deputy Court Administrator Romeo D. Mendoza, who referred them to the National Bureau of Investigation.[10]

Acting on their report,[11] the NBI decided to entrap the respondent judge, thus: Fifty one hundred peso bills were marked and placed in a white envelope to be carried by NBI Agent Angelica Somera, who was to pose as Lourdes Nieva's relative. She was to hand the envelope to Judge Hermoso, following which the other NBI agents would come in and take appropriate action.

As narrated by NBI Agent Somera, she and Lourdes Nieva went to see the respondent judge in his office on March 2, 1984, to inform him and Flores, who was also there, that Somera had the money. Hermoso told her to give it to Flores, who asked her to follow him outside. Instead she handed the envelope to the respondent judge who placed it on top of his desk, saying the money would have to be counted by Flores. He asked Lourdes Nieva to call Flores back and she went out to do so, but as Flores did not return, Hermoso placed the envelope inside the right top drawer of his desk. Immediately after Nieva left, which was the pre-arranged signal, the other six NBI agents entered the respondent judge's office with a photographer. Agent Albino Reyes, who led the group, introduced himself and his companions as NBI agents and asked the respondent judge for the envelope.[12] Hermoso opened the top drawer and a picture of the envelope while still there was taken. Reyes then took the envelope and invited the respondent judge to the NBI headquarters.

Reyes testified that Hermoso hesitated at first but later agreed to go with them to the NBI headquarters. He refused, however, to give any statement or to submit to physical examination of his hands to detect the presence of fluorescent powder with which the marked money had previously been dusted.[13]

In his own testimony before Justice de la Fuente, the respondent judge claimed that complainant Ang filed the charges against him because he had berated her for her insistence on the release of the payload notwithstanding that the decision had not yet become final and executory. He confirmed Ang's testimony that he practically drove her out of his office on February 17, 1984, and asked her to send her lawyer instead to talk to him.[14]

Regarding the entrapment, Hermoso averred that when Somera proffered him the envelope, he told her to give it to Flores, who asked her to follow him outside. Nieva did but returned after a while and again instructed Somera to give the envelope to Hermoso.[15] She made a second proffer but Hermoso again told her to give it to Flores. Instead, Somera placed it on top of his desk. Nieva then left the room, and immediately thereafter the NBI agents barged into his office.[16]

Hermoso denied that he placed the envelope inside the desk drawer, insisting that it was on top of his desk when the NBI agents came in.[17] Accordingly, he rejected the picture[18] of the envelope inside his desk drawer which he claimed was not taken in his presence.

Like Justice de la Fuente, we prefer to give credence to the testimony of the NBI agents, coming as it does from an unpolluted source. These agents had no reason to testify falsely against the respondent judge. They were just doing their duty. By contrast, the respondent judge had to protect himself against the testimonial and photographic evidence that he had received the envelope, and to reject its implications of such evidence.

The defense offered by both Hermoso and Flores was that the P5,000.00 contained in the envelope was supposed to be payment for the storage and guarding of the payload. If this be so, one may well wonder over: a) the

manner it was received; and b) the amount of such payment.

The manner it was received was, to say the least, suspicious. If it was an honest payment of the storage and guarding fees, why was it not openly received and receipted for, as in any regular transaction? Why did Flores, by his own admission,[19] ask Nieva to follow him outside so he could count the money in the empty court-room? Flores could not explain.

The amount of the claimed fees has also not been explained satisfactorily by Flores. According to him, the daily storage fee was P50.00 and the guarding fee was P20.00 a day and P30.00 a night.[20] Since the payloader was stored and guarded from January 5, 1984 to March 2, 1984, or for 57 days, the total charges would have been P5,700.00. Flores lamely explained that he merely rounded off the charges,[21] which were not for him to reduce because they were payable to Danny Floro, in whose premises the payloader was stored, and the two persons who guarded it.

It is noteworthy that when the payloader was finally released by him on March 24, 1984, he accepted from com-plainant Ang a fee of only P2,500.00.[22] Asked why, he said this corresponded only to the guards' fees from January 5 to March 24, 1984, and added that the storage fees would be paid by the complainant directly to Floro.[23]

If, as he earlier testified, the guarding fees amounted to P50.00 daily, and the period covered was from January 5 to March 24, 1984, or 80 days, then the total would have been P4,000.00 and not P2,500.00. In fact, this amount was payment for the total storage and guarding fees at the rate of P100.00 daily from February 29 to March 24, 1984, for a period of 25 days. February 29 was the date com-plainants Ang and Nieva went to see the respondent judge and asked him to release the payloader in view of their manifestation of satisfaction of judgment.

Was this admission of satisfaction of judgment necessary?[24] The respondent judge told the parties he could not release the payloader without such manifestation because the decision he had rendered had not yet become final. This was obviously a ploy because he knew, or should have known that he did not have to wait because the parties had entered into a compromise agreement. The respondent judge admitted that he had known of the compromise agreement as early as February 17, 1984, and that the admission of satisfaction of judgment was filed on February 28, 1984, pursuant to his instructions.[25] Yet up to March 2, 1984, date of the entrapment, he had not yet released the payloader, obviously because he was playing for time so he could impose his demands upon the complainants.

Since the storage and guarding fees had already been settled in full on February 28, 1984, the only plausible reason for the P5,000.00 in the white envelope is found in the testimony of complainant Ang.

According to her, she went to the respondent judge to secure the release of the payloader to her in view of the decision in her favor rendered on February 9, 1984. In-formed by the judge that the release could not be ordered because the decision had not yet become final, she submitted to him, on February 17, 1984, a compromise agreement whereby the defendant agreed to cede to her the said payloader in full satisfaction of the judgment. The respondent judge nevertheless remained adamant and told her to let her lawyer talk to him.[26] After talking with him, her lawyer in-formed her that the respondent judge was asking for 12 sets of fluorescent lamps costing P1,800.00 each as a condition for the release of the payloader.[27] As she could not afford this, she went to see the respondent judge on February 24, 1984, together with her lawyer and Lourdes Nieva, and haggled with him. The respondent judge first demanded P8,000.00 for himself and Flores but Nieva counter-offered with 5% of the cost of the payloader, estimated at P150,000.00, and the respondent judge accepted, but demanded immediate payment. As they did not have the money at that time, they left, the judge advising them to submit a satisfaction of judgment, along with the payment, so he could release the payloader.[28]

Continuing, she said that on February 29, 1984, she and Nieva returned to the court of the respondent judge. Only Nieva talked to Hermoso, but she could hear their conversation because she stayed at the door and within earshot.[29] Nieva informed him that they had already filed their admission of satisfaction of judgment but had not yet raised the money. The respondent judge warned her they had to do so or he would sell the payloader at public auction the following week.[30] He even suggested to Nieva that she sell the payloader for P30,000.00 so she could give him and Flores P10,000.00 each and keep the remaining P10,000.00. In the end, however, he agreed to reduce the sum to P5,000.00.

As against the respondent judge's denials, we find the foregoing testimony more credible for detail, consistency and truth. We also note that the complainants, who were in fact adverse parties in the civil case in question, had no motive for fabricating this common charge they have made against the respondents, except to bring them to justice for their offenses.

We are convinced, on the basis of the evidence before us, that the respondent judge, in connivance with his co-respondent sheriff, demanded and received from the complainants, litigants in Civil Case No. 50328, the sum of P5,000.00 as consideration for the approval by the said judge of the release by the respondent sheriff of the payloader that the defendant had agreed to cede to the plaintiff in full satisfaction of the judgment.

Their acts constitute a violation of the Anti-Graft and Corrupt Practices Act, as charged in the information filed against them in the Sandiganbayan, and also the crime of extortion, one of the modes of committing robbery.

The dismissal "without prejudice" of the information against them in the Sandiganbayan was based on the technical ground that the motion to dismiss filed by the Tanodbayan was not tainted with fraud or grave abuse of discretion. There was no categorical finding that they had not committed the crime imputed to them.

For the record, let it be stated that the investigating justice recommended the exoneration of the respondents on the ground that their guilt had not been established beyond reasonable doubt. In administrative proceedings such as these, however, mere preponderance of evidence will suffice to establish the charges.

The respondent judge bases his motion for the lifting of his suspension on the dismissal of the information against him by the Tanodbayan. Such dismissal is no bar to the continuation of the administrative proceedings against him. Neither did his non-appointment during the recent reorganization of the judiciary automatically terminate these cases, as there remain the questions of whether he is entitled to retirement and other benefits and also, more importantly, whether he is fit to remain a member of the Philippine bar.

We decide these questions against him. As for his co-respondent, he is also denied reinstatement and deprived of the benefits he would otherwise have validly claimed had he comported himself properly as a public functionary.

It is no over-statement to say that, in a very real sense, the success of our democracy will depend on the faith of the people in the judiciary as the impartial dispenser of justice. That faith will grow or dwindle according as the judges are honest or corrupt. Realizing this, we have endeavored to purify the bench as much as we are able, that the misdeeds of a relatively few may not taint the name of all. This endeavor will continue until the judiciary is washed clean and white.

A similar effort should be made and maintained in the legal profession so that every lawyer, as an officer of the court, may pursue only the highest standards in the practice of his calling.

WHEREFORE, the Court holds as follows:

a) In AM No. R-97-RTJ, Judge Rodolfo G. Hermoso and Deputy Sheriff Romulo Flores are both declared guilty of gross misconduct and considered **DISMISSED** from their respective offices as of the date of their preventive

suspension on March 27, 1984, with forfeiture of whatever retirement and other benefits they would otherwise have been entitled to; and

b) In AM No. 2656, Judge Rodolfo G. Hermoso is hereby DISBARRED for conduct unbecoming a member of the legal profession.

SO ORDERED.

Teehankee, C.J., Yap, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.
Fernan and Feliciano, JJ., on leave.

[1] Rollo (AM No. 2656), pp. 15-16.

[2] Ibid., pp. 1-2.

[3] Rollo (AM No. R-97-RTJ), Vol. II, p. 16.

[4] Ibid., pp. 18-20.

[5] Id., Vol. I, p. 43.

[6] Rollo (AM No. 2656), pp. 34-35.

[7] Ibid., pp. 154-155.

[8] Rollo (AM No. R-97-RTJ), Vol. I, pp. 1-3.

[9] Rollo (AM No. 2656), pp. 3-5.

[10] Ibid., p. 103.

[11] Id., pp. 103-104.

[12] TSN, June 19, 1986, pp. 9-16.

[13] TSN, Jan. 8, 1986, pp. 16-17.

[14] TSN, July 24, 1986, pp. 17-18.

[15] Ibid., pp. 12,14.

[16] Id., pp. 14-15.

[17] Id., p. 14.

[18] Exh. "J-3" (AM No. 2656).

[19] TSN, July 17, 1986, p. 26.

[20] Ibid., p. 36.

[21] Id., pp. 24, 41.

[22] Id.; pp. 34-35.

[23] Id., p. 36.

[24] Rollo (AM No. 2656), pp. 6-7.

[25] TSN, July 28, 1986, pp. 5-6.

[26] TSN, Dec. 11, 1985, pp. 16-17.

[27] Ibid., p. 18.

[28] Id., pp. 21-26, 29-30.

[29] TSN, Dec. 18, 1985, pp. 7, 20-21.

[30] Id., pp. 7, 10.

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