

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO VENZON, DEFENDANT-APPELLANT, ATTORNEY ENRIQUE A. DE LA CRUZ, RESPONDENT.*G.R. Nos. L-38076-80. August 29, 1975*

Ponente: FERNANDO, J.

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Even at this late date, notwithstanding the several occasions where this Court was left with no choice but to impose disciplinary sanction, some members of the bar unfortunately are still remiss in the fulfillment of their responsibilities, or at the very least, in informing this Court of circumstances which, if not justifying, will at the very least explain their inability to do so. Respondent Enrique A. de la Cruz belongs to such category. As counsel de parte for accused Rodolfo Venzon, he failed to file appellant's brief within the period which expired on December 22, 1974. As a consequence, there was the usual resolution addressed to an erring member of the bar for his inability to comply with his sworn duty. Three months passed without a word being received from him. Thereafter, on June 2, 1975, for his failure to file the brief and to submit the explanation required, this Court, in its resolution, suspended him from the practice of the law. In order not to prejudice appellant Venzon, the resolution of this Court likewise saw to it that a counsel de oficio be appointed on the basis of a strict rotation.

At this stage, to be precise on August 26, 1975, came this urgent motion from such counsel: "1. That on June 2, 1975, this Honorable Court acting through its Second Division ordered the suspension of the undersigned from the practice of law for his failure to file appellant's brief in the above-entitled case and to submit his explanation thereof within ten days from receipt of the copy of the resolution of the Court dated February 4, 1975; 2. That the undersigned tried his level best to comply with his duties to this Honorable Tribunal particularly in connection with the brief for the appellant but due to – circumstances beyond his control — the failure of appellant's wife to return to the undersigned the transcript of the stenographic notes of the proceedings in the trial court compounded by her assurances that appellant's relative-lawyer in Manila will prepare the brief as shown by the affidavit *** was not able to do so; 3. That the undersigned did not receive any copy of the resolution of this Honorable Court dated February 5, 1975 requiring him to explain why he was not able to file appellant's brief and indeed he was taken by surprise when he received the copy of the resolution suspending him from the practice of law; 4. That upon verification from the records of this case with the Clerk of Court, undersigned discovered that a certain Mrs. Ayalde received the registered letter containing copy of the resolution of this Honorable Court dated February 5, 1975; 5. That the undersigned does not know personally any person by the name of 'Mrs. Ayalde' and had never authorized any person carrying that name to receive mail for him, especially registered ones; the undersigned, however, had heard from his wife, Mrs. Felisa B. de la Cruz, the Principal Teacher of Dadiangas North Elementary School, General Santos City, that she has a classroom teacher by that name — Mrs. Ayalde; 6. That it is very probable that the letter carrier, upon learning that the undersigned was out of town that day of March 11, 1975, decided to deliver the letter to Mrs. De la Cruz at her Office in the school but not finding her there, had Mrs. Ayalde receive it instead; 7. That it is of judicial notice that the month of March is a very busy month for

Public School Teachers and with all probability Mrs. Ayalde forgot or overlooked to turn over to Mrs. De la Cruz said registered letter thereafter; ***"[1] It is his prayer that his suspension be lifted and that he be appointed as counsel de officio for appellant.

What immediately attracts attention is that instead of including an affidavit from that "certain Mrs. Ayalde" to whom was attributed the receipt of the copy of the resolution of this Court of February 5, 1975, there was instead a sworn statement by Teresa Venzon, the wife of appellant, which confirmed the fact that the transcript of stenographic notes was taken by her from respondent for the purpose of enlisting the aid of a Manila lawyer, a relative of her husband, regarding his appeal and that she was unable to bring back with her the aforesaid transcript, which she left with him. She then, according to her affidavit, assured respondent that the preparation of the brief could very well be entrusted to such Manila lawyer. If that were really so, respondent could have filed the formal pleading withdrawing from the case as counsel. Then he could have avoided the predicament he is in right now. While it will appear that there is no satisfactory explanation, this Court, in a spirit of leniency, is disposed to lift the suspension not because he had been penalized enough, three months having elapsed, but also because appellant Venzon, in his own handwriting at the bottom of an indorsement from the Senior Executive Assistant and Acting Assistant Director Julio M. Alcantara of the Bureau of Prisons, to the effect that he was notified of the appointment of his counsel de officio, made clear that he is withdrawing his appeal. The reason is understandable for in the affidavit of his wife, she was informed by her husband that "he was able to save the life of one of the Officers of the Bureau of Prisons in a recent riot that happened and by reason of his good behavior, his parole was already recommended ***"[2]

WHEREFORE, the suspension of respondent Enrique A. de la Cruz is hereby lifted. His prayer to be appointed as counsel de officio is denied for the reason that in accordance with the express wishes of appellant Rodolfo Venzon, his appeal is considered withdrawn. Such withdrawal of appeal then is likewise ordered in this resolution. Let a copy of this resolution be spread on the records of respondent Enrique A. de la Cruz.

Makalintal, C.J., Barredo, Aquino, and Martin, JJ., concur.

Antonio and Concepcion, Jr., JJ., are on official leave.

[1] Urgent Motion, 1-2

[2] Affidavit, Annex A to Urgent Motion, 3.

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