

ALFONSO C. CHOA, COMPLAINANT, VS. JUDGE ROBERTO S. CHIONGSON, RESPONDENT.

AM No. MTJ-95-1063. February 09, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The uncomplicated issues in this administrative complaint have been properly joined with the filing of the respondent's comment as required in the 1st Indorsement of 18 August 1995 of Hon. Bernardo P. Abesamis, Deputy Court Administrator. No further pleadings need be required from the parties.

In the complaint signed by Atty. Raymundo A. Quiroz as counsel for the complainant and verified by the latter, the respondent is charged with grave misconduct, gross bias and partiality, and having knowingly rendered an unjust judgment in Criminal Case No. 50322 entitled, "People of the Philippines vs. Alfonso C. Choa."

Criminal Case No. 50322 was for Perjury and initiated by the complainant's wife, Leni L. Ong-Choa, through the filing of a letter-complaint with the Office of the City Prosecutor of Bacolod City. This complaint arose from the alleged untruthful statements or falsehoods in the complainant's Petition for Naturalization dated 30 March 1989 which was docketed as Case No. 5395, of Branch 41 of the Regional Trial Court (RTC) of Bacolod City.

In due course, an Information was filed, in the Municipal Trial Court in Cities (MCTC) of Bacolod City by the Office of the Prosecutor, charging the complainant herein with perjury allegedly committed as follows:

That on or about the 30th day of March, 1989, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, did, then and there wilfully, unlawfully, feloniously and knowingly made untruthful statements of [sic] falsehoods upon material matters required by the Revised Naturalization Law (C.A. No. 473) in his verified "Petition for Naturalization" dated April 13, 1989, subscribed and sworn to before Notary Public Felomino B. Tan, Jr., who is authorized to administer oath[s], which petition bears Doc. No. 140; Page No. 29; Book No. XXIII; and Series of 1989, in the Notarial Register of said Notary Public, by stating therein the following, to wit:

5. 1 am married to a Filipino. My wife's name is Leni Ong Choa and now resides at 46 Malaspina Street, Bacolod City. I have two (2) children, whose names, dates and places of birth, and residences are as follows:

NAME

DATE OF BIRTH

PLACE OF BIRTH

RESIDENCE

ALBRYAN ONG CHOA

July 19, 1981

Bacolod City

46 Malaspina St., Bacolod City

CHERYL LYNNE ONG CHOA

May 5, 1983

Bacolod City

46 Malaspina St., Bacolod City

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10. I am of good moral character, I believe in the principles underlying the Philippine Constitution. I have conducted myself in a proper and irreproachable manner during the entire period of my residence in the Philippines in my relations with the constituted government as well as with the community in which I am living.

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When in truth and in fact said accused knew that his wife Leni Ong Choa and their two (2) children were not then residing at the said address at No. 46 Malaspina Street, Villamonte, Bacolod City, having left the aforesaid residence in 1984, or about five (5) years earlier and were then residing at Hervias Subdivision, Bacolod City, that contrary to his aforesaid allegations in his verified Petition for Naturalization, accused while residing at 211, 106 Street, Greenplains Subdivision, Bacolod City, has been carrying on an immoral and illicit relationship with one Stella Flores Saludar, a woman not his wife since 1984, and begotting [sic] two (2) children with her as a consequence, as he and his wife, the private offended party herein, have long been separated from bed and boards [sic] since 1984; which falsehoods and/ or immoral and improper conduct are grounds for disqualifications [sic] of [sic] becoming a citizen of the Philippines.

Act contrary to law.

The case was docketed as Criminal Case No. 50322 and was assigned to Branch III thereof where the respondent is the presiding Judge.

After trial, the respondent Judge rendered judgment on 21 February 1995 and found the complainant herein guilty beyond reasonable doubt of the crime of perjury. The respondent Judge accordingly sentenced him to suffer the penalty of six months and one day of prison correccional and to pay the costs.

The complainant moved for a reconsideration of the judgment alleging that: (1) there is no basis for the conviction since his petition for naturalization had been withdrawn and therefore had become functus officio; (2) the petition for naturalization is a pleading, hence its allegations are privileged; and (3) his prosecution violates the equal protection clause of the Constitution. The last ground is founded on an admission made by a representative of the Office of the Solicitor General of her lack of knowledge of any perjury case filed based on a withdrawn or dismissed petition for naturalization.

The respondent Judge denied the motion for reconsideration for lack of merit in an order dated 31 March 1995.

The complainant filed the instant complaint on 14 July, 1995 and prayed for the removal of the respondent judge from office. As grounds therefor, he alleges that:

(1) The respondent Judge is guilty of Grave Misconduct, Gross Bias and Partiality, and Knowingly Rendering An Unjust Judgment when he intentionally failed to divulge the next-door-neighbor relationship between him and the family of Leni Ong Choa and to disqualify himself from sitting in the criminal case on such ground as part of the grand design and preconceived intention to unjustly convict the complainant of the crime charged without due process.

(2) The allegations in the Information do not constitute the offense of perjury.

(3) The petition having been withdrawn with finality, it has become functus officio and it is as if the Petition was not filed at all so that whatever false statements were contained therein were no longer required by law and had ceased to be on a material matter.

(4) The respondent Judge admitted for prosecution Exhibit "P" (handwritten list of properties) even if this was self-serving as it was undated and unsigned; and Exhibit "Q" (letter of Leni Ong Choa's counsel to the complainant) even if it was also self-serving as there was no showing that he received the letter.

(5) The respondent Judge has sentenced the complainant to suffer a penalty higher than that provided by law, without applying the Indeterminate Sentence Law.

The respondent Judge refutes the charge in his Comment dated 12 September 1995, thus:

He denies being the next-door-neighbor of Leni Ong Choa there being a house, belonging to the Sia family, separating his house and that of Leni Choa; he and the rest of the members of his family are not acquainted with Leni Choa or any member of her family and had not exchanged greetings nor is he even a nodding acquaintance of Leni Choa or any member of her family.

He asserts that if the allegations in the Information do not constitute an offense, the complainant should have filed a Motion to Quash but he did not. Just the same, when the complainant stated in the Petition that he together with his wife and children lived at 46 Malaspina St., Bacolod City, he committed a falsehood under oath because the truth is two (2) years before the filing of the Petition, his wife and two (2) children were not living with him anymore, making him liable for perjury.

Respondent also avers that the complainant is not of good moral character contrary to what he stated in the Petition for Naturalization since he is conducting an extra-marital relationship with Stella Flores Saludar, his former employee, with whom he has begotten two (2) children. As a matter of fact, a case for concubinage against complainant was filed and is now pending in Court.

According to the respondent, a reading of the Order granting the Motion to Withdraw the Petition will show that the Prosecutor representing the Office of the Solicitor General opposed the Motion to Withdraw the Petition for the reason that the complainant had abandoned his wife and two (2) children, is not giving them support and is now living with his paramour.

On the claim of the complainant that his petition for naturalization has become functus officio in view of its withdrawal, hence no longer existent, the respondent Judge maintains that the withdrawal reduced the petition to functus officio only for the purpose of the Special Proceedings. but not when it is used as evidence in other cases.

On the issue of the admissibility of the Exhibits P, Q and R, the respondent Judge contends that Exhibits P, Q and R were duly identified by Leni Ong Choa and her testimonies on these were found to be credible by the Court.

Finally, respondent Judge asserts that the Indeterminate Sentence Law is not applicable in the perjury case as the penalty imposed by the court did not exceed one (1) year.

The respondent Judge then prays for the dismissal of the complaint for being patently without merit and for the censure and reprimand of the complainant's counsel with a warning to refrain from filing similar harassment suits.

In the Evaluation contained in a Memorandum dated 17 November 1995 and duly approved by the Court Administrator, Hon. Zenaida N. Elepaño, Deputy Court Administrator, makes the following findings and

conclusions:

EVALUATION: A careful study of the records shows that the allegations of the complainant are devoid of any merit.

The charge that respondent Judge and Leni Choa are neighbors [sic] appears to be petty under the circumstances. Granting that they are indeed next-door neighbors does not necessarily mean that respondent Judge has violated Rule 137 of the Rules of Court for Disqualification of Judges. Nowhere in said Rule is it ordained that being the neighbor of a party-litigant is reason enough for the Judge to disqualify himself from hearing the former's case.

With respect to the complainant's claim that the allegations in the information do not constitute the offense of perjury, an administrative proceeding is not the forum to decide whether the judge has erred or not, especially as complainant has appealed his conviction.

Even if the matter can be examined, we do not find any error in the Court's decision.

The elements of perjury as enumerated in the case of *People of the Philippines vs. Bautista* (C.A., 40 O.G. 2491) are as follows:

- (a) Statement in the affidavit upon material matter made under oath;
- (b) The affiant swears to the truthfulness of the statements in his affidavit before a competent officer authorized to administer oath;
- (c) There is a willful and deliberate assertion of falsehood; and
- (d) Sworn statement containing the falsity is required by law.

It cannot be denied that the petition for naturalization filed by Alfonso C. Choa was made under oath and before a competent officer authorized to administer oath as shown by the records (p. 4, APPENDIX "A"). This petition for naturalization is required by law as a condition precedent for the grant of Philippine citizenship (Section 7 Corn. Act No. 473).

The question now boils down to whether there is a willful and deliberate assertion of falsehood.

As shown by the records (p. 1, APPENDIX "A"), Alfonso C. Choa declared in his petition dated 30 March 1989 that his wife Leni Ong Choa resides at 46 Malaspina St. Bacolod City while in the administrative complaint he filed against respondent Judge, he stated that his wife Leni Ong Choa left their family residence (46 Malaspina St., Bacolod City) in the latter part of 1984 (p. 6, par. 2 of Adrn. Complaint). This simply means that when he filed his petition for naturalization, Leni Ong Choa was not residing at the abovementioned address anymore.

It was also proven that Alfonso C. Choa had a child with a woman not his wife and he himself signed the birth certificate as the father of that child (p. 4, APPENDIX "E"). This is contrary to what he declared in his petition that he is of good moral character which is required under the Naturalization Law (par. 3, Sec. 2 Corn. Act No. 473).

There was therefore a deliberate assertion of falsehood by Alfonso C.. Choa to warrant conviction for perjury as found by Judge Chiongson.

As to the complainant's claim that the withdrawal of the petition makes it functus officio, we sustain the respondent Judge's view that the Petition can be used as evidence in another case. In the case of *People of the Philippines vs. Cainglet* (16 SCRA 748) the Court held that "every interest of public policy demands that perjury be not shielded by artificial refinements and narrow technicalities. For perjury strikes at the very administration of the laws (*Jay vs. State*, [1916] 15 Ala. App. 255, 43 So. 137). It is the policy of the law that

judicial proceedings and judgment shall be fair and free from fraud, and that litigants and parties be encouraged to tell the truth and that they be punished if they do not (People vs. Niles, 300 Ill., 458, 133 N.E. 252, 37 A.R.L. 1284, 1289)."

On whether the judge erred in not applying the Indeterminate Sentence Law to the case, we cite Section 2 of R.A. No. 4103 (Indeterminate Sentence Law) which provides in part that "This Act shall not apply to x x x those whose maximum term of imprisonment does not exceed one year, x x x" Since the penalty for perjury under Article 183 of the Revised Penal Code is arresto mayor in its maximum period which is one (1) month and one (1) day to six (6) months toprision correccional in its minimum period which is six (6) months and one (1) day to two (2) years and four (4) months, the respondent Judge was correct in not applying the Indeterminate Sentence Law.

As earlier stated, the foregoing discussion is in no way the final appreciation of the Court's decision which is on appeal, but is made only to illustrate the utter lack of merit of this charge. Counsel for the complainant must be reprimanded for assisting in the filing of this complaint.

Deputy Court Administrator Elepaflo then recommends:

Premises considered, it is respectfully recommended that this complaint against Judge Roberto S. Chiongson be DISMISSED for lack of merit. It is further recommended that Atty. Raymundo A. Quiroz be REPRIMANDED for assisting in the filing of a patently unmeritorious complaint.

We fully agree with Deputy Court Administrator Elepaflo that the allegations in the complaint are utterly devoid of merit. Good faith and good motive did not seem to have inspired the filing of the complaint.

Indeed, as correctly pointed out by the respondent, if the complainant and his counsel honestly believed that the allegations in the Information in the perjury case did not constitute an offense, they should have filed a motion to quash. Under Section 3(a), Rule 117 of the Rules of Court, the accused may move to quash the complaint or information on this ground.

The complainant never did; he was arraigned and entered into trial. Although his failure to do so did not operate as a waiver of the said ground pursuant to Section 8 of the same Rule, it showed, nevertheless, his admission of the weakness of the ground. If he had perceived it to be strong, he would not have wasted an opportunity to put an early end to the ordeal of a prolonged litigation. Besides, this ground had not at all been invoked by him, as shown in the order of 31 March 1995 denying the complainant's motion for the reconsideration.

The withdrawal of the Petition for Naturalization did not and cannot amount to a recall of the questioned untruthful statements. Neither could it extinguish any offense which may have been committed by reason of such untruthful statements.

As to the respondent Judge's being a next-door neighbor of the complainant's wife - the complainant in the perjury case - it must be stressed that that alone is not a ground for either a mandatory disqualification under the first paragraph or for a voluntary disqualification under the second paragraph of Section 1, Rule 137 of the Rules of Court. In any event, the complainant has failed to disclose in his complaint that he had raised this matter at any time before the rendition of the judgment. In fact, the summary of the grounds of his motion for reconsideration in the respondent's order denying the said motion does not include this matter. If indeed the complainant honestly believed in the justness of this grievance, he would have raised it in an appropriate pleading before the trial court.

Finally, the nature and character of the complainant's grievances relative to the respondent's judgment finding the former guilty of perjury. May only be properly ventilated in an appropriate judicial proceeding, such as an appeal from the judgment.

This kind of recourse, whether made in addition to a regular appeal from the judgment, or in lieu thereof, if none had been made, is clearly without any basis and cannot be tolerated for it robs Judges of precious time which they could otherwise devote to the cases in their courts or to the unclogging of their dockets.

Atty. Raymundo A. Quiroz, counsel for the complainant, must have been aware of the utter lack of merit of the charges against the respondent. As a Member of the Philippine Bar he is bound: (1) by his oath, not to, wittingly or willingly, promote or sue any groundless, false, or unlawful suit nor give aid nor consent to the same; (2) by Section 20(c), Rule 138 of the Rules of Court, to counsel or maintain such action or proceedings only as appear to him to be just; and (3) to uphold the Code of Professional Responsibility. It was incumbent upon him to give a candid and honest opinion on the merits and probable results of the complainant's case (Rule 15.05, Canon 15, Code of Professional Responsibility) with the end in view of promoting respect for the law and legal processes (Canon 1, Id.). He should, therefore, be required to show cause why no disciplinary action should be taken against him for his apparent failure to observe the foregoing duties and responsibilities.

WHEREFORE, for want of merit, the instant complaint is DISMISSED.

For the reasons above stated, Atty. Raymundo A. Quiroz is hereby directed to SHOW CAUSE, within fifteen (15) days from notice hereof, why he should not be disciplinarily dealt with for his apparent failure to comply with his duties and responsibilities above stated.

SO ORDERED.

Narvasa, C.J (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

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