

SUSIMO MOROÑO, COMPLAINANT, VS. JUDGE AURELIO J.V. LOMEDA, RESPONDENT.

A.M. No. MTJ-90-400. July 14, 1995

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PER CURIAM:

On 5 March 1990, Susimo Moroño filed a sworn complaint with the Supreme Court against Judge Aurelio Lomeda of the Municipal Circuit Trial Court ("MCTC"), Manjuyod-Bindoy?Ayungan, Negros Oriental, for dishonesty and/or conduct prejudicial to the best interest of the service.

The Court, in a Resolution dated 14 August 1990, required respondent Judge to comment on the complaint. Upon submission of the comment, the Court referred the matter to the Court Administrator for evaluation, report and recommendation.

On 3 July 1991, Deputy Court Administrator J.A. Bernad submitted a Report to the Court stating that the complaint was meritorious and that, in effect, there was probable cause to believe that respondent Judge had violated the constitutional rights of complainant Moroño. Accordingly, the Court assigned this case to Executive Judge Enrique C. Garovillo, Regional Trial Court, Dumaguete City, for investigation, report and recommendation. Judge Garovillo, however, demurred on the ground that he was Presiding Judge in Criminal Cases Nos. 7592, 7593 and 7594 where respondent Judge Aurelio Lomeda had appeared as a prosecution witness and complainant Susimo Moroño as one of the several accused. The Court relieved Judge Garovillo of the assignment and directed him to raffle the case among the other incumbent Regional Trial Court Judges in Dumaguete City. Accordingly, the case was raffled to Judge Teopisto Calumpang.

Investigating Judge Calumpang first set this administrative case for hearing on 25 February 1992. Because of motions for postponement filed not only by respondent Judge but also by the complainant, this case was reset for hearing several times. Reception of evidence for the complainant, however, began finally on 18 March 1993. Complainant himself testified and was cross-examined by counsel for respondent Judge. Complainant also presented Antonio Maquiling, the employee of Branch 30, Regional Trial Court, Dumaguete City, in charge of the records of criminal cases in that Branch who identified the decision rendered by Judge Enrique C. Garovillo in Criminal Cases Nos. 7592, 7593 and 7594 entitled "People v. Eniceto Moreno, et al." A copy of this decision had been attached to the complaint, as well as a copy of the transcript of stenographic notes taken of the testimony of respondent Judge Lomeda and of the testimony of Joaquin Abordo, Jr. and of Atty. Roque V. Amante, all given during the trial of the mentioned Criminal Cases. Respondent testified in his own behalf and was cross-examined by complainant's counsel. A subpoena had been issued to and served upon Atty. Roque Amante upon request of respondent Judge Lomeda, but that witness failed to appear. Respondent Judge submitted an Affidavit dated 16 October 1990 of Atty. Amante and asked complainant's counsel (for convenience and to avoid delay) to admit "the existence and contents of the Affidavit of Atty. Roque Amante to which proposal Atty. Justo Paras offer[ed] no objection." [1]

Examination of the sworn complaint filed in this case shows that effectively two (2) charges were presented against respondent Judge:

Firstly, that respondent Judge had disregarded or violated the constitutional rights of complainant to be informed of the nature and cause of the accusation against him; of his right to be free from "torture, force, violence, threat, intimidation or any other means which vitiate the free will" while under detention and preliminary investigation and to have any confession or admission obtained by any of such means to be excluded as inadmissible in evidence against him, thereby exposing complainant and his co-accused Tano Barotag to serious risk of conviction of three (3) counts of murder on the basis of the coerced extrajudicial confession and respondent's false testimony with respect to such confession.

Secondly, that respondent Judge Lomeda had falsely testified as a prosecution witness during the trial of the three (3) criminal cases for murder that the constitutional rights of the complainant had in effect been observed in connection with the extrajudicial confession which the prosecution presented in those cases.

I

After the hearings conducted by Investigating Judge Calumpang, he submitted his Report dated 22 March 1994. In this Report, the Investigating Judge found that the evidence submitted by complainant had established the following as the relevant facts:

"Complainant Susimo Moroño was charged as one of the accused in Criminal Cases Nos. 7592,7593, and 7594 for Murder; while under detention, complainant together with another accused, Tano Barotag, executed separate in-custody confessions subscribed by respondent Judge Aurelio Lomeda; at the trial of the aforementioned triple murder cases, complainant Susimo Moroño and his co-accused Tano Barotag, assailed the validity of their extrajudicial confessions for having been taken after they were made to sign the same without the assistance of counsel; after they signed their separate extrajudicial confessions at the police station, they were brought by the policemen to the house of Atty. Roque Amante in Bindoy where Atty. Amante signed the extrajudicial confessions to make it appear that accused Susimo Moroño and his co-accused Tano Barotag were assisted by counsel at the time it was taken and prepared; then complainant Susimo Moroño and his co-accused Tano Barotag were taken by the police to the Office of respondent Judge Aurelio Lomeda in Manjuyod, Negros Oriental where the said respondent signed the confessions as subscribing officer without the presence of Atty. Roque Amante, alleged counsel for the accused; the contents of the confessions were not read and translated by the respondent Judge before the complainant Susimo Moroño and his co-accused Tano Barotag prior to his signing of the confessions as subscribing officer; the confessions were already signed by complainant Susimo Moroño and Tano Barotag at the police station of Bindoy, Negros Oriental before Atty. Roque Amante signed the said confessions at his house in Bindoy; Atty. Roque Amante had no participation in the preparation and execution of the confessions; that he was not the accused's counsel nor was he present when respondent Judge Lomeda signed the confessions as subscribing officer; the accused in the aforementioned triple murder cases were all acquitted after the Court rejected the admissibility of the extrajudicial confessions for being violative of Section 12(1), Article III of the Constitution." [2]

The defenses submitted by respondent Judge were basically (a) denial and (b) that the administrative charges had been inspired by complainant's counsel, Atty. Justo Paras, a former Mayor of Manjuyod, a political opponent of respondent's family. The gist of respondent Judge's testimony was summarized in the Investigating Judge's Report as follows:

"Respondent Judge Aurelio Jesus Lomeda y Villarin testified as the lone witness for himself on August 19, 1993 where he declared that he is a MCTC Judge with official station at Bindoy, Negros Oriental, and a resident of the same municipality; he knows Susimo Moroño because the latter was one of the accused in a criminal case, the preliminary investigation of which he conducted and also Susimo Moroño is the ostensible nominal complainant in this administrative case; he denied the claim of Susimo Moroño that when the latter was presented before his chamber, the confession which was already prepared was already signed and not in

his presence because the truth of the matter is that Moroño affixed his signature before him in the presence of Atty. Amante, Sr.; he denied that Susimo Moroño was mauled prior to the execution of the affidavit of confession because he (respondent) made a cursory examination of his (complainant) person and saw no physical injury which was visible to his naked eye. Upon inquiry by the Court of what was the participation of Atty. Roque Amante when the supposed confession was allegedly executed by the complainant, respondent testified that it was made to appear in the extrajudicial confession that the same was prepared with the assistance of Atty. Roque Amante; he did not ask the complainant whether the latter was the one who engaged the services of Atty. Amante for purposes of executing the extrajudicial confession because he relied on the Rules of Court, that when a lawyer appears together with the litigant, it is presumed that the lawyer is appearing for that litigant; when the complainant Susimo Moroño entered his chamber, the said complainant was not accompanied by Atty. Amante but about 15 seconds later, Atty. Amante came when he was in the act of reading the confession, and Atty. Amante affixed thereafter his signature in the confession; Susimo Moroño did not protest as to whether or not Atty. Amante is supposed to represent him or not; he asked Susimo Moroño and his co-accused Barotag whether they swear to the veracity or truthfulness of the contents of their confession and they answered in the affirmative; when the complainant left his chamber, Atty. Amante stayed behind because he had another case to attend to; Judge Enrique Garovillo who penned the decision in that multiple murder, Criminal Cases Nos. 7592, 7593 and 7594, all entitled 'People of the Philippines versus Susimo Moroño, et al.' was not the presiding judge during the trial on evidence of the said entitled cases, when he testified, it was before Judge Enrique B. Inting; the aforesaid cases were tried in part by Honorable Judge Villaraza; he vehemently denied the phrase used by the Court in its decision through the Presiding Judge Enrique C. Garovillo that he was less truthful in his testimony; he had no less than fifteen (15) but not more than twenty administrative cases filed against him and except this one and two (2) more, all of them had been dismissed; there is only one (1) person behind these cases and that is Atty. Justo Paras; when asked what is his relationship with Atty. Paras then and now, the respondent answered that he really do not know, maybe Atty. Justo Paras considers his family as a political opponent and by hurting him, Atty. Justo Paras will hurt the political chances of his family, that is, however, his own speculations (TSN: pp. 3-14, August 19, 1993)."[3] (Underscoring supplied)

On cross-examination, however, respondent Judge admitted that because "the confession" was "in the vernacular," he "did not read anymore the confession considering that Atty. Amante was there and I presume that Atty. Amante was appearing for the accused and also, I asked the accused whether they swore to the veracity and truthfulness of the contents of their confessions and they answered in the affirmative. In other words, I saw no need for me to read to them the contents of their confession." Respondent Judge told them (accused and Barotag) whether they knew the significance of the document before them and into which they [had] affixed their signatures before him and they answered in the affirmative. (TSN, pp. 19-25, supra)"[4]

Deliberating upon the Report submitted by Investigating Judge Calumpang, and after examination of the records of this case, the Court considers that the following findings of the Investigating Judge with respect to negligence on the part of respondent Judge are supported by substantial evidence and adopts such findings as his own:

"From the standpoint of the testimonies and documentary evidence presented by both parties, this Court opines that the issue obtaining in the case at bar is, whether or not respondent Judge Aurelio Lomeda was remiss in the performance of his judicial duties as subscribing officer of the in-custody extrajudicial confessions of complainant Susimo Moroño and his co-accused Tano Barotag in relation to Criminal Cases No. 7592, 7593 and 7594 for murder.

It is established in the records that complainant Susimo Moroño is an unlettered person as evidenced by the thumbmark imprinted on his extrajudicial confession which constitute as his signature therein. For this reason, since it is apparent that the said accused does not know how to read and write, it is incumbent upon the respondent Judge to be cautious and to look carefully into the circumstances surrounding the taking of the separate in-custody extrajudicial confessions of complainant Susimo Moroño and his co-accused, Tano

Barotag (People v. Galit, G.R. No. L-51770) to prevent gross violation of their constitutional rights. Under the given circumstances, the better part of prudence which Judge Lomeda should have taken to satisfy the requirement of the law that the accused be informed of his rights under the Constitution and our laws was to ask several short and clear questions from the accused of the contents of their confessions and every right explained in simple words in a dialect or language known to the accused (People v. Galit, supra) before he signed the confessions as subscribing officer. The above correct procedure should have been followed to prevent gross violation of the rights of the accused.

Granting, however, as testified to by the respondent Judge that after ascertaining, by means of a visual examination, that there were no visible signs of torture on the accused, and that the latter read and understood the confessions; he swore the accused in the presence of Atty. Amante; that he no longer read to the accused the contents of the confessions for he was told by Tano Barotag, one of the accused, that he already read the contents thereof, while in the case of accused Susimo Moroño, he (respondent Judge) was told by the said accused that his lawyer read to him the contents of the document, the above testimony constitute an evidence against the respondent Judge that he improvidently violated the requirements of the law that the accused be informed of his rights under the Constitution and our laws. Moreover, it was convincingly established during the trial of the triple murder cases through the testimony of Patrolman Joaquin Abordo, Jr. that the accused signed the extrajudicial confessions at the police station of Bindoy and Atty. Amante likewise testified that he signed the confessions at his house in Bindoy, Negros Oriental; that the documents were already signed by the two accused when the same was presented to him; that he had no participation in the taking of the confessions; that he is not the accused's counsel; that he was not present when Judge Lomeda signed the extrajudicial confessions as subscribing officer. (Exhibits 'E-5,' 'E-6,' 'E-7,' 'E-8,' 'E-9,' 'E-10,' 'E-11' and 'E-12.')

The foregoing established facts are clear and patent that respondent Judge Lomeda was inexcusably negligent in failing to observe in the performance of his duties diligence, prudence and circumspection which the law requires the rendition of any public service (Soroza v. Honrado, 110 SCRA 388) and which if left unchecked would render the administration of justice and the entire judicial system a mere mockery. For as succinctly articulated by Chief Justice Jose Abad Santos, 'the power of the judiciary rests upon the faith of the people and the integrity of the courts. Take this faith away and the moral influence of the court is gone and popular respect impaired.' (As cited in the case of Jose P. Uy and Rizalina C. Uy v. Hon. Judge Teresita Dizon-Capulong, A.M. No. RTC-91--766, April 7, 1993).

The act of respondent Judge, therefore, in subscribing the confessions without diligently ascertaining whether or not the confessants were apprised of and accorded their constitutional rights is contrary to what is expected of him as a judge, x x x."[5] (Italics supplied)

This Court has several times before stressed that a judge is viewed as the visible representation of law and justice from whom the people draw their will and inclination to obey the law; the judge must, accordingly, be the first to abide by the law and present an example for others to follow.[6] Part and parcel of his duty to be faithful to the law is his duty to exercise all necessary and appropriate diligence to ascertain that instruments, like extrajudicial confessions of guilt of offenses so serious as triple murder to which he attaches his signature, have complied with all reasonable fidelity with the requirements of the Constitution and applicable law. In the present case, the acts of respondent Judge Lomeda fell too far short of that standard.

Respondent Judge Lomeda failed to ascertain that the guarantees of the Constitution had been respected in connection with the execution of the extrajudicial confession. As shown by the thumbmark on his supposed confession, complainant Moroño was illiterate. Respondent Judge, therefore, should have proceeded with extra caution in order to prevent the constitutional guarantees from being reduced to futile platitudes.[7] He should have satisfied himself that the accused had been effectively informed of their constitutional rights and that these had been explained to them in a dialect or language known to them, and in a manner comprehensible to them.7a While

respondent claims that there were no visible marks of torture or injury on complainant (something vigorously contested by complainant), respondent Judge exerted no appreciable effort to ascertain whether the confessions had in fact been voluntarily executed by complainant and the latter's co-accused. The appropriate standards of judicial diligence in respect of cases like this one were spelled out about a dozen years ago in *People v. Barros*[8] in the following manner:

"It would do well to remind judges, fiscals, and other officers to whom persons accused of a crime are brought for swearing to the truth of their statements to adopt the practice of having the confessants physically and thoroughly examined by independent and qualified doctors before administering the oath, even if it is not requested by the accused. Or if no doctor is immediately available, the swearing officers should themselves examine the entire bodies of the confessants for marks of violence, particularly the portions covered by their clothing. Such examination, if regularly required, and the results officially noted, would not only deter attempts to secure confession through violence, but ultimately shorten and speed up criminal trials by precluding future controversies on whether the statements were obtained through torture or not. Common sense advises that the swearing officers should not be content with affirmations by the accused that their statements are voluntary, nor with denials that they were improperly procured. Manifestations of this kind are to be expected if the accused is to return to the custody of the agents who obtained the confessions, since repudiation of the statements would only result in the infliction of further punishment by those charged with improperly extracting the challenged statements."[9] (Underscoring supplied)

II

The Investigating Judge declined to deal with this second charge made in the instant complaint:

"As regards the charge against respondent Judge of false testimony in a court of law, the undersigned, however, finds that this Court is not the proper forum to determine the liability of respondent herein. If complainant so desires, he may file a case for perjury or false testimony before a court of proper forum."[10]

The acts or omissions of a judge may well constitute at one and the same time a violation of the criminal law and an administrative offense. In *Icasiano, Jr. v. Sandiganbayan*,[11] the Court stressed the distinction between administrative and criminal proceedings in the following manner:

"x x x [T]he Court is of the view that the distinction between administrative and criminal proceedings must be upheld, and that a prosecution in one is not a bar to the others.

It is, therefore, correct for the Sandiganbayan to hold that double jeopardy does not apply in the present controversy because the Supreme Court case (against the herein petitioner) was administrative in character while the Sandiganbayan case also against said petitioner is criminal in nature.

When the Supreme Court acts on complaints against judges or any of the personnel under its supervision and control, it acts as personnel administrator, imposing discipline and not as a court judging justiciable controversies. Administrative procedure need not strictly adhere to technical rules. Substantial evidence is sufficient to sustain conviction. Criminal proceedings before the Sandiganbayan, on the other hand, while they may involve the same acts subject of the administrative case, require proof of guilt beyond reasonable doubt."[12] (Underscoring supplied)

Thus, while the acts or omissions attributed to a judge may well constitute a violation of the Revised Penal Code, this consideration has not deterred the Supreme Court from exercising its administrative disciplinary authority over judges. The Court has taken cognizance of administrative complaint against judges for rendering false or unjust judgments (an offense penalized under Article 204, Revised Penal Code)[13] and for falsification of documents (punished under Article 171 [4], Revised Penal Code).[14] To accept the position of the Investigating

Judge in the present case would be drastically to curtail the disciplinary authority of the Supreme Court over judges. We believe and so hold that the Court can and should properly take cognizance of the present administrative complaint for dishonesty and conduct prejudicial to the best interest of the service against respondent Judge Lomeda for having allegedly testified falsely in a court of law, an act which is penalized by Articles 180-183 of the Revised Penal Code.

More specifically, the complainant charges respondent Judge Lomeda with dishonesty for having testified falsely in Criminal Cases Nos. 7592-7594 for triple murder before the Regional Trial Court, Branch 38, Dumaguete City. Complainant maintains that respondent Judge had testified falsely in declaring that complainant Moroño had affixed his thumbmark to the extrajudicial confession in the office of and before respondent Judge and in the presence of Atty. Roque Amante. Complainant also maintains that respondent had testified that Atty. Amante had signed the extrajudicial confession as alleged counsel of complainant and his co-accused on the same occasion. Examination of the records, however, shows, complainant insists, the falsity of these declarations, since complainant had affixed his thumbmark to the confession inside the police headquarters without the assistance of Atty. Roque Amante or any other counsel. Thereafter, the confession was taken to the house of Atty. Amante where he was made to sign the same, to produce the appearance that Atty. Amante had assisted Moroño in the execution of the confession.

In his Comment on the instant complaint, respondent Judge insists that his testimony before the trial court in Criminal Cases Nos. 7592-7594 was truthful. Respondent Judge also claims that complainant had been unable to prove evil intent on his part in respect of respondent's alleged false testimony.

The Court has examined carefully the transcript of stenographic notes attached by complainant Moroño to his sworn complaint and duly identified in the investigation conducted by Investigating Judge Calumpang.[15] At the trial of the triple murder case, Judge Lomeda was presented as a prosecution witness for the purpose of sustaining the admissibility and validity of the extrajudicial confessions attributed to complainant Moroño and his co-accused Tano Barotag. As subscribing officer of the confessions, Judge Lomeda declared that Moroño had affixed his thumbmark onto the document of confession inside respondent's office and in the presence of Atty. Amante. Judge Lomeda further declared that Atty. Amante had also subscribed the confession on that occasion. This testimony of respondent Judge was flatly contradicted by testimony of the complainant and of other witnesses presented in the triple murder case.

In his testimony at the trial of the murder case, Judge Lomeda declared:

"Atty. Floriano Beltran (Direct Examination)

Q.

Do you know where were you in performing your duties on August 26, 1985?

Judge Aurelio Lomeda:

A.

I was at my permanent station.

Q.

Where?

A.

In Manjuyod, Negros Oriental.

Q.

Do you recall if you have signed a certificate of extra-judicial confession on that day?

A.

Yes.

COURT:

Q.

Whose extra-judicial confession?

A.

Moroño and Barotag.

x x x x x x x x

Atty. Beltran:

Q.

There is also the signature here, on the lower portion, there is a statement, 'This is to certify that I have personally examined the affiant and he fully understood and voluntarily executed the same.' Whose signature is this on top of the typewritten name of Aurelio J. V. Lomeda?

A.

That is my signature.

x x x x x x x x

Q.

Here is a signature here on top of the typewritten name Roque Amante, counsel, whose signature is this?

A.

That is the signature of Roque Amante.

Q.

Why do you know that is his signature?

A.

Because he signed before me.

Q.

It would appear here that he signed in his capacity as counsel, will you please tell the honorable court who was his client that he represented here when he affixed that signature?

A.

He was representing the accused Susimo Moroño.

x x x x x x x x

COURT:

Q.

In what part of Bindoy did Roque Amante sign this document?

A.

Actually, he signed in Manjuyod, Negros Oriental together with accused Susimo Moroño.

x x x x x x x x

ATTY. BELTRAN:

Q.

Can you inform the Court how did it happen that Roque Amante was there before you?

A.

I remembered that accused Susimo Moroño was escorted by policemen and Atty. Amante was in their company and they come to see me in Manjuyod.

x x x x x x x x

Q.

I pray, your honor, that this thumb print of Susimo Moroño be marked as Exhibit 'G-9.' Why do you know that is his thumb print?

A.

Susimo Moroño affixed his thumb print to the document in my presence.

Q.

On the first page which has been previously marked as Exhibit 'H-1' is a signature on top of the typewritten name Tano Barotag, whose signature is that?

A.

That is the signature of Tano Barotag.

Q.

Why do you know that is his signature?

A.

Tano Barotag affixed his signature in this document in my presence.

x x x x x x x x

Q.

Again, I will draw your attention to the signature appearing on top of the typewritten name of Roque Amante, counsel, whose signature is that?

A.

That is the signature of Roque Amante.

Q.

Why do you know that is his signature?

.

I know that that is his signature because he signed it in my presence."*[16]* (Italics supplied)

At cross-examination during the trial, respondent Judge was equally categorical:

"ATTY. CONSTANTINO TRINIDAD (Cross-examination)

Q.

When these documents were presented to you for the affiant to swear, were the extrajudicial confessions already signed by the affiant or not?

A.

Not yet.

Q.

In the same way, how about the assisting counsel when the documents were presented?

A.

Atty. Amante had not yet affixed his signature.

Q.

In other words, the affiant and the assisting counsel affixed their signature in your presence?

A.

Yes, Sir."*[17]* (Italics supplied)

In the investigation conducted by Judge Calumpang in the present administrative case, respondent Judge Lomeda, on 19 August 1993, reiterated the testimony he had given on 18 April 1988 before the criminal court:

"ATTY. EDUARDO SEDILLO (DIRECT EXAMINATION)

Q.

According to his (Sosimo Moroño's) testimony, he claimed that when he was presented before your chamber, the confession which was already prepared was already signed and not in your presence, what can you say to his declaration?

JUDGE LOMEDA:

A.

The allegation of Moroño is false. The truth of the matter is that Moroño affixed his signature before me in the presence of Atty. Roque Amante, Sir.

x x x x x x x x

Q.

In your comment, especially in the discussion, you claimed that Atty. Amante was in ipsissima verba physically present at the time Sosimo Moroño swore to his extrajudicial confession, will you kindly tell this court what do you mean by that?

A.

What that means is that Atty. Rogue Amante was present in my chamber at the time when Sosimo Moroño affixed his signature on his extrajudicial confession.

x x x x x x x x

Q.

When the accused and complainant herein Sosimo Moroño entered your chamber, was he accompanied by Atty. Amante?

A.

Atty. Amante came about 15 seconds later when I was in the act of reading the confession.

Q.

And Atty. Amante affixed thereafter his signature in the confession?

A.

Yes, Sir."^[18] (Italics supplied)

Upon the other hand, Patrolman Abordo, also a prosecution witness in the triple murder case, and who had accompanied complainant Moroño into the sale of respondent Judge Lomeda, confirmed that Moroño had in fact signed the extrajudicial confession in the police station. Pat. Abordo testified in the following manner:

"(CROSS EXAMINATION)

ATTY. JACULBE:

Q.

You said Mr. Abordo, that you let Susimo Moroño sign this alleged extrajudicial confession, where did you let him sign this?

PATROLMAN ABORDO:

A.

In the office.

Q.

In the Office of the Integrated National Police?

A.

Yes.

Q.

All these alleged thumb marks of Susimo Moroño were affixed in your office?

A.

Yes, Sir.

x x x x x x x x

Q.

How about this Atty. Roque Amante, where did he affix his signature, in your office in Bindoy or in Manjuyod?

A.

In our office.

Q.

In other words, when you brought these alleged extrajudicial confessions of Susimo Moroño and Tano Barotag, all these were already signed by Tano Barotag, Susimo Moroño, and Atty. Roque Amante?

COURT TO WITNESS:

Q.

In other words, these were complete as far as the signing and affixing of thumbmarks by Tano Barotag and Susimo Moroño and the signing by Roque Amante?

A.

Yes Sir.

Q.

All the pages?

A.

Yes sir.

Q.

So that nothing was to be signed or affixed anymore before Judge Lomeda, correct? except the signature of Lomeda.

A.

Yes sir."[19] (Italics supplied)

Atty. Roque Amante himself testified at the murder trial that he had affixed his signature in his house, and not in the presence of Judge Lomeda. He stated:

"(DIRECT EXAMINATION)

ATTY. PARAS:

Q.

On page 3 of this confession marked as Exh. 'G,' for the prosecution, likewise bears the signature of Roque Amante, counsel, will you please look at this and tell the Court whether this is your signature?

ATTY. ROQUE AMANTE:

A.

Yes, this is my signature.

Q.

And where was this signature affixed by you?

A.

I affixed this signature in my house at Cabugan.

Q.

On August 26, 1985, was there an occasion for you to have gone at the Bindoy Integrated National Police?

A.

No I have not gone there.

Q.

On that same date of August 26, 1985, did you have a chance any time during that day to have gone to the Office of the Municipal Circuit Trial Judge of Manjuyod?

A.

I have not gone there.

Q.

When you signed this extra judicial confession of Susimo Moroño, was the signature of Judge Lomeda already affixed?

A.

No, there was no signature here of Judge Lomeda.

Q.

When the signature of Judge Lomeda was affixed on this extrajudicial confession, were you before him that day of August 26, 1985?

A.

No, I did not appear before him. I know that Judge Lomeda is acquainted with my signature. In fact, that is the reason why he affixed his signature there.

Q.

I would like to invite your attention to Exhibit "H" consisting of the extrajudicial confession of Tano Barotag. Will you please look [over] the same and tell this court whether or not this was the extrajudicial confession that was brought to you on that day of August 26, 1985 in your house?

A.

Yes, this is the very extrajudicial confession.

Q.

There is a signature here of Roque Amante above the typewritten name Roque V. Amante. Will you please tell this court whose signature is this?

A.

That is my signature.

Q.

Where was this signature affixed by you?

A.

I affixed this in my house at Cabugan, Bindoy, Negros Oriental.

x x x x x x x x

Q.

Were you likewise present before Judge Lomeda when you affixed your signature?

A.

No, I was not present before him when I affixed my signature."^[20] (Italics supplied)

The trial court in the murder case found no truth in the testimony given before it by respondent Judge Lomeda. In his decision dated 31 January 1991, Judge Garovillo held:

"Judge Lomeda claims in his testimony that accused Sosimo Moroño affixed his thumbmark, and accused Tano Barotag affixed their respective signatures on Exhibits 'G' and 'H' before him at his office in Manjuyod, Negros Oriental. But the overwhelming weight of evidence to the contrary is that, as testified to by Prosecution witness Pat. Joaquin Abordo, accused Sosimo Moroño, accused Tano Barotag, and Atty. Roque Amante, that the thumbmarks of Accused Sosimo Moroño and, the signatures of accused Tano Barotag and Atty. Roque Amante were affixed on said exhibits in Bindoy, Negros Oriental. It has not been shown why Prosecution witness Joaquin Abordo would testify on a vital matter contrary to that of Prosecution witness Judge Aurelio Lomeda who testified ahead of him except for the simple reason that he was just telling the truth. And the truth it must be since it was corroborated by, not only the two accused, but also by a lawyer, Atty. Roque Amante, who it is assumed must have been aware of the oath that he took upon his admission to the Philippine Bar that he 'will do no falsehood, nor consent to the doing of any in court.' In view of such strong contradiction against his testimony, the court does not hesitate to conclude that Judge Aurelio Lomeda was less than truthful on that point, which is a factor that militates against the merit of exhibits 'G' and 'H'."^[21] (Italics supplied)

We believe that the phrase "less than truthful" used by Judge Garovillo in describing the testimony given by respondent Judge Lomeda, while somewhat euphemistic (after all, respondent Judge Lomeda was not on trial for murder), is clear enough: that the testimony given by respondent Judge was false. The Court further believes that the conclusion of fact of trial Judge Garovillo was wholly justified by the record before him. Having examined that same record, we find no basis for overturning that conclusion of Judge Garovillo. Respondent Judge has been quite unable to explain the direct contradictions between the testimony he gave before the criminal court and before the Investigating Judge in this administrative case, and the testimony given by the other witnesses in the criminal cases.

It is noteworthy that while Investigating Judge Calumpang declined to determine the liability of respondent Judge Lomeda for having falsely testified in open court, the Investigating Judge himself concluded, in the course of ascertaining respondent's liability for violation of the constitutional rights of the complainant, that respondent

Judge's testimony must have been false:

"x x x [T]he above testimony constitute an evidence against the respondent Judge that he improvidently violated the requirements of the law that the accused be informed of his rights under the Constitution and our laws. Moreover, it was convincingly established during the trial of the triple murder cases through the testimony of Patrolman Joaquin Abordo, Jr. that the accused signed the extrajudicial confessions at the police station of Bindoy and Atty. Amante likewise testified that he signed the confessions at his house in Bindoy, Negros Oriental; that the documents were already signed by the two accused when the same was presented to him; that he had no participation in the taking of the confessions; that he is not the accused's counsel; that he was not present when Judge Lomeda signed the extrajudicial confessions as subscribing officer. (Exhibits 'E-5,' 'E-6,' 'E-7,' 'E-8,' 'E-9,' 'E-10,' 'E-11' and 'E-12.')[22]

The same acts of respondent Judge Lomeda which the Investigating Judge characterized as negligence necessarily involved the giving of testimony by respondent Judge which was untruthful.

Respondent Judge, as already noted, attached to his Comment dated 10 December 1990 filed in this administrative case, an Affidavit dated 16 October 1990, executed by Atty. Roque Amante. In this Affidavit, Atty. Amante said:

- "1. That sometime in the morning of August 26, 1985, a Monday, a jeep-load of policemen and civilians arrived at my residence;
2. That one of the policemen — whose identity I cannot now recall - alighted from the jeep, went inside my house and requested me to affix my signature on a document which purported to be the extrajudicial confession of one Susimo Moroño; that I did affix my signature on the said document; that, soon thereafter, the policemen and civilians left;
3. That after the policemen and civilians left, I went to the 2nd Municipal Circuit Trial Court of Manjuyod-Bindoy-Ayungon of the Province of Negros Oriental, with official station at Manjuyod;
4. That I went inside the chambers of the Honorable Aurelio J.V. Lomeda, the presiding judge of the abovesaid court, it being my intention to see him on a matter other than that regarding the policemen and civilians who were earlier in my house;
5. That I saw the policemen and civilians who were earlier in my house inside the chambers of Judge Lomeda;
6. That Judge Lomeda asked me whether it was my signature which was affixed on the document which purported to be the extrajudicial confession of Susimo Moroño; that I replied in the affirmative; and
7. That I am executing this affidavit voluntarily, freely, of my own volition and free of any duress, intimidation, coercion, violence upon my person or that of my family or promise of reward.

x x x x x x x x "[23]

(Italics supplied)

This Affidavit of Atty. Amante, is, in the first place, hearsay, as affiant was not subjected to cross-examination during the administrative investigation. While complainant's counsel may be regarded as having stipulated as to the contents of that Affidavit, complainant cannot be deemed to have been thereby estopped from questioning the truthfulness of the statements made therein by Atty. Amante. Further, assuming for present purposes only, that Atty. Amante did in fact visit the office of the respondent Judge on some other, unrelated, matter later during the day, respondent Judge's testimony that (a) Atty. Amante had signed the confession document in the presence of respondent Judge, and that (b) complainant Moroño had affixed his thumbprint at respondent's office and in his presence, remain untruthful. Finally, the Court is loathe to put any reliance on this Affidavit, executed more than five (5) years after the testimony given by respondent Judge in the triple murder case, an Affidavit which is in

effect one of retraction and to all appearances, an afterthought. In this Affidavit, Atty. Amante contradicted statements that he himself had made under oath five (5) years ago at the trial of the triple murder case. He cannot casually be allowed to do that.

We conclude that the evidence before the criminal court and before the Investigating Judge in the present administrative proceeding constitutes convincing proof of the falsity of the abovequoted testimony of respondent Judge Lomeda, for purposes of the present administrative proceeding. That the thumbmarks of accused Susimo Moroño and the signatures of co-accused Tano Barotag and Atty. Roque Amante had been affixed on the extrajudicial confession at the police headquarters in Bindoy, Negros Oriental and in Atty. Amante's house, respectively, and not in the office and in the presence of respondent Judge Lomeda, is not an immaterial detail. To the contrary, that circumstance relates to the voluntary or the coerced character of the extrajudicial confessions and to the presence of accused's counsel at the time, which are, of course, central to the admissibility in evidence of those confessions. The testimony of respondent Judge Lomeda tended to show that those confessions had been voluntarily made, and to that extent, tended to lend them an appearance of respectability and credibility which they did not in fact deserve. Respondent judge argues that while his testimony before the criminal court had been described as "less than truthful" by the trial judge, it was not necessarily false testimony: for a false statement must connote a perverse and deliberate effort to lie, a fact or intent not established by complainant Moroño.[24]

Respondent's argument does not persuade. The record of this case, at the very least, clearly established the prima facie falsity of the testimony of respondent Judge. It thereupon became incumbent upon respondent Judge to show that his testimony was in fact neither false nor perverse or malicious. Respondent Judge, however, presented no proof other than his bare allegation that complainant had not shown malice on his part, that would reasonably explain away his statements made before the criminal court. Complainant was under no necessity of submitting evidence that would separately and independently show evil intent or motive on the part of respondent Judge. It was enough for complainant to show that the false testimony on the part of respondent Judge was deliberate and not merely inadvertent error on the latter's part. Respondent's willingness to give the testimony that he in fact gave before the criminal court exposed complainant Moroño to a serious risk of conviction of triple murder. Complainant was fortunate that Judge Garovillo knew his constitutional law and criminal procedure. Nevertheless, complainant spent five (5) years in preventive detention before being finally acquitted for lack of competent evidence establishing his guilt beyond reasonable doubt. Thus, respondent's false testimony, and his willingness to give that testimony, had serious consequences for complainant Moroño.

It is well stressed that the Court is not here penalizing respondent Judge for an error committed in the exercise of the latter's judicial duties; that respondent judge is not here being required to be infallible in his judgment. Respondent Judge's duty in the criminal case was to testify truthfully. When respondent Judge was in the witness stand in the criminal case for triple murder, he did not have the leeway available to him as a judge in the adjudication of cases pending before him. His duty in the witness stand was simply to tell the truth. There was no discretion available to him on that matter. We agree with the judgment of the criminal court that respondent Judge did not perform his duty as a witness.

When testimony is given under oath, the truth and only the truth is expected. This is demanded of ordinary citizens; we can expect no less from a judge who is himself the embodiment of the people's sense of justice and their last recourse when other institutions have failed.[25]

Falsehood is particularly odious when committed in judicial proceedings, for that constitutes an imposition upon the court and creates serious risks of a miscarriage of justice. The odiousness of false testimony is aggravated a hundred fold when it is committed by a judge in an attempt to lend respectability to an instrument obtained in violation of the constitutional rights of accused persons. False testimony given by a judge shows not only his lack

of honesty and integrity; it also reveals grievous disrespect for the office that he has sworn to uphold.

For all the foregoing, the Court concludes that respondent Judge Lomeda was (1) grossly negligent in violating or disregarding the constitutional rights of complainant Moroño and (2) guilty of having given false testimony before the Regional Trial Court of Dumaguete City in Criminal Cases Nos. 7592, 7593 and 7594. The Court holds that such gross negligence and false testimony constitutes serious dishonesty and conduct grossly prejudicial to the best interest of the service.

WHEREFORE, respondent Judge Aurelio J.V. Lomeda is hereby DISMISSED from the Judiciary with prejudice to reinstatement or re-employment in any capacity in any branch or instrumentality of the government, including government-owned or controlled corporations, with forfeiture of all earned or accrued retirement and leave privileges and benefits to which he might be entitled. This Decision is immediately executory, and respondent is hereby ORDERED to vacate immediately his office and henceforth cease and desist from performing any function or act in connection with such office. This Decision shall be served by personal service.

Let a copy of this Decision be spread in the personal record of respondent Judge, as well as in the records of the Office of the Bar Confidant.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

Bellosillo, J., on leave.

[1] Report of the Investigating Judge dated 22 March 1994, Rollo, p. 293.

[2] Id., Rollo, pp. 293-295.

[3] Id., Rollo, pp. 290-292.

[4] Id., Rollo, pp. 292-293.

[5] Id., Rollo, pp. 295-298.

[6] Sabitsana v. Villamor, 202 SCRA 435 (1991); Impao v. Makilala, 178 SCRA 541 (1989).

[7] See People v. Galit, 135 SCRA 465 (1985).

7a People v. Basay, 219 SCRA 404 (1993); People v. Tujon, 215 SCRA 559 (1992).

[8] 122 SCRA 34 (1983).

[9] 122 SCRA at 44. See also People v. Navoa, 143 SCRA 513 (1986); People v. Cabrera, 134 SCRA 362 (1985).

[10] Report of the Investigating Judge, Rollo, p. 298.

[11] 209 SCRA 377 (1992).

[12] 209 SCRA at 383.

[13] In Re: Rafael Climaco, 55 SCRA 107 (1974); Rodrigo vs. Quijano, 79 SCRA 10 (1977); Pabalan vs. Guevarra, 74 SCRA 53 (1976); and Dela Cruz vs. Concepcion, A.M. No. RTJ--93-1062, 25 August 1994.

[14] Sulu Islamic Association of Masjiod Lambayong vs. Malik, 226 SCRA 193 (1993).

[15] See, Testimony of Antonio Maquiling, TSN, 18 March 1993, pp. 1-20.

- [16] Annex "B" to the Complaint, TSN of 20 April 1988, pp. 4-24; Rollo, pp. 28-48.
- [17] Id., p. 37; Rollo, p. 61.
- [18] TSN, August 19, 1993.
- [19] Crim. Case Nos. 7592-94, TSN, June 23, 1988, pp. 18--21; Rollo, pp. 85-88.
- [20] Rollo, pp. 109-112; Annex "D" of the Complaint, TSN (Crim. Cases No. 7592-7594), 17 October 1989, pp. 5-8.
- [21] Annex "A" to the Complaint, Trial Court Decision in Criminal. Cases Nos. 7592-4, pp. 12-13; Rollo, pp. 18-19.
- [22] Report of the Investigating Judge, Rollo, p. 296.
- [23] Annex "I", Rollo, p. 164.
- [24] Memorandum on the Merits, pp. 1-3; Rollo, pp. 272--275.
- [25] The Court Administrator vs. Gines, 224 SCRA 261 [1993].

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