

WILMOR HADAP, ET AL., PETITIONERS, VS. MUNICIPAL JUDGE ABE-LARDO LEE, BACON, SORSOGON, RESPONDENT.

Adm. Matter No. 1665-MJ. June 29, 1982

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

A verified complaint dated June 29, 1977[1] was filed by Wilmor Hadap and thirty other Barangay Captains from Magallanes, Sorsogon, charging Municipal Judge Abelardo Lee of Bacon, Sorsogon, formerly of the Municipal Court of Magallanes, on the following counts:

- "1. Dishonesty and conduct unbecoming of a Judge;
- "2. Partiality in the administration of justice;
- "3. Using prisoners/detailed persons for personal purposes;
- "4. Using his residence as Municipal Judge's Office instead of the Government Building where a room has been provided for the purpose by the local government;
- "5. Habitual use of vulgar and obscene words and phrases; and
- "6. Willful refusal to attend regular flag ceremonies." [2]

Specifications of the charges are included in three criminal complaints and two affidavits attached to the complaint.[3]

This complaint was referred to respondent for comment on August 2, 1977.[4] Respondent submitted on October 10, 1977 his comment to the charges[5] quoted below:

"1. ALLEGED DISHONESTY AND CONDUCT UNBECOMING OF A JUDGE

Apparently the basis of this charge is the complaints for Estafa against me filed by:

- a) Gregorio Peratero, I.S. No. 312;
- b) Angeles Bon, I.S. No. 313; and
- c) Beato Albor, I.S. No. 314.

with the Provincial Fiscal's Office of Sorsogon.

In this regard, I have the honor to enclose my self-explanatory Counter-Affidavit to said charges, and attached hereto as Annex "A". I have reliable information that the aforementioned complaints have been dismissed and I will promptly forward to your goodselves the Resolutions covering said three (3) estafa cases.

"2. PARTIALITY IN THE ADMINISTRATION OF JUSTICE

This is not supported by any specification or evidence. The complainants are requesting your good Office to go on a fishing expedition for this charge (Pls. refer to note at bottom of page 2 of the Petition).

I respectfully submit that I am not in the position to make any comment with respect to this charge, not being informed in what way or ways I have been allegedly partial in the administration of justice.

"3. ALLEGED USE OF PRISONERS/DETAINEES FOR MY PERSONAL PURPOSES

I respectfully deny the malicious imputation that I have been using prisoners/detainees for my personal use.

What is true however is that, once in a while, whenever I am all alone in my big house at the poblacion of Magallanes, which is merely a stone's throw from the Police Station, I ask a prisoner or detainee to accompany me at night in the house. It is the prisoner/detainee himself who asks permission from the Jailer to be allowed to sleep in his house and instead of sleeping in his house, he sleeps with me, as will be seen in the attached self-explanatory affidavits of three (3) detainees which are marked as Annexes "B", "C" and "D" with their corresponding translations marked Annexes "B-1", "C-1", and "D-1", respectively.

It is the practice in the Municipal Jail of Magallanes to allow prisoners/detainees to sleep, once in a while, outside of the jail with, of course, prior permission from the Jailer and I do not see anything wrong if a prisoner/detainee sleeps in my house instead of going to his house. All they do is just sleep in my house, arriving there at about 8:00 to 9:00 in the evening and returning to jail early at about 6:00 the next morning. I never made any detainee work for me because all that I needed of him was his company at night in my very big house, as can be seen in their affidavits.

Regarding the alleged notes I sent to the Jailer, (par. 3 of Affidavit of Gonzales), it is true I sometime send a note to the Jailer asking to send over to me a certain detainee for the following purposes:

- a) whether he can afford to post a bail bond or not;
- b) to ask him when he would like his case to be scheduled for arraign-ment or trial;
- c) to find out if he can afford the services of a de- partelawyer or would like the Court to appoint a deofficio lawyer to defend him;
- d) explore the possibility of an amicable settlement, and
- e) other matters that would facilitate and speed up the proceedings of his case.

Never for once did I ever ask by note the detail of any detainee/prisoner to my residence as maliciously insinuated in the charge, for using him for personal purposes.

"4. RE USE OF MY RESIDENCE AS COURT'S OFFICE INSTEAD OF THE OFFICE PROVIDED IN THE GOVERNMENT BUILDING

It is true that once in a while, whenever I have no official duties to transact or no marriage to solemnize I use to stay in my library at home which is just a few meters away from the Municipal Court, particularly at times when I am preparing decisions or studying pending cases, for the following expendent reasons:

- a) The Office of the Municipal Court of Magallanes, is devoid of any book or usable materials. It is in my house where I have my library, which is barely 15-20 meters to the more complete library of my older brother lawyer, German Lee, where I use to also avail of the books thereat;
- b) The Clerk of Court stays at the office and could easily call for me in case any matter comes up requiring my attention; and

c) Particularly in making decisions in criminal cases, the same require absolute secrecy and concentration, conditions which are not obtaining in the Municipal Court where people just get in and out and the Clerk busily pounding on the typewriter plus the continuous singing and shouting of primary school children in a three-room schoolhouse about four meters from our office.

"5. HABITUAL USE OF VULGAR AND OBSCENE WORDS/PHRASES

Apparently, this charge is being supported by the affidavit of Beltran Hael, the brother of the alleged offended, Gloria Hael, in Crim. Case No. 1953 (for rape) which I dismissed after conducting the preliminary investigation for failure of the prosecution to establish a prima facie case.

According to Beltran Hael in his affidavit, the order of dismissal was read by my Clerk of Court right after the termination of the preliminary investigation in his presence, and in the presence of his mother Rita Hael, Gloria Hael, the offended party, and many others. This is a downright lie because the Order of Dismissal in this case was prepared and promulgated many days after the termination of the preliminary investigation. When the Order of dismissal was, however, promulgated and read to the accused, only the latter and about 10 other persons were present, and definitely the complainant, her mother Rita, and the affiant Beltran Hael were not among the crowd during said promulgation. Since the accused does not know English, I had to translate in Bicol the Order of dismissal which necessarily and unavoidably contained words about sexual intercourse, but not in the vulgar manner as portrayed by affiant Beltran Hael. It would not be amiss to say that his affidavit was motivated by ill-motive because of the dismissal of his sister's case.

I also vehemently deny the accusation that I allegedly enjoy very much using vulgar words whenever solemnizing marriages. It is true, whenever I solemnize marriage, in my lecture to the newly weds, I have to touch on sex for two purposes. First, concerning family planning. In family planning I use to talk on vasectomy with an explanation that vasectomy, per authorities, does not affect the sexual desire and performance of the husband and, therefore, at the proper time, he should not be afraid to submit to such operation; Second, to forewarn the couple on the common cause of marital failure, which is sexual maladjustment. Naturally, on discussing sexual maladjustment, one cannot avoid discussing sex. I believe this is one of the important duties of a solemnizing officer ... to preserve matrimony or marital relations.

"6. WILFUL REFUSAL TO ATTEND REGULAR FLAG CEREMONIES

I am not sure what flag ceremonies are referred to in the charge, but I surmise that probably flag-raising ceremonies being attended by some Municipal Officials and employees. Once in a while I attend this Monday morning flag ceremony. I submit, however, that attendance in this flag ceremony is optional on the part of the officials and employees as since my assumption to office last February, 1975, I have never received any official communication requiring compulsory attendance thereat.

In truth and in fact, not one of these barangay captains, even those residing in the poblacion of Magallanes, attend said ceremonies.

In the main, I daresay that these charges are instigated and authored by the Municipal Mayor of Magallanes and Barangay Captain Wilmor R. Hadap.

With respect to the Mayor, last June 6, 1977, I filed a criminal case against Mayor Manuel Carranza before the Municipal Court of Magallanes (docketed as Crim. Case No. 2075) for Interference In Judicial Proceedings under Art. 243 of the RPC and since then he had been out after my throat. In the past I did not mind his previous attempts to influence the Court to twist the administration of justice in favor of his political henchmen but this time he gone too far and committed the blunder of putting his interference with my judicial functions in writing.

In regard to Barangay Captain Wilmor Hadap, he has been for the past ten (10) years my personal enemy. He was the one who made the rounds to secure the signatures of the other barrio captains.

I believe therefore, that these charges are pure harassments and are motivated by personal spite and ill-will. The same is replete with exaggerations and malicious concoctions intended to picture a semblance of malfeasance or misfeasance of official duties.

I wish to clear my name once and for all in order to end these continued harassments and bickerings. If it would not be interpreted as arrogance on my part, I submit that a formal investigation of these charges would be in order so that, once and for all, the truth would come out. If your good Office would decide otherwise, nevertheless, I submit that these charges being manifestly unmeritorious to deserve favorable consideration, be dismissed and this matter considered closed."^[6]

The Second Division of this Court, in the resolution dated July 19, 1978,^[7] referred the case for investigation, report and recommendation to Executive Judge Rustico de los Reyes of the Court of First Instance of Sorsogon.

The investigation conducted was extensive, including 30 closed door sessions, although hearings were not had for over a year when the Investigator was temporarily assigned to Branches I and VI of the Court of First Instance of Bulacan.

The report of the Investigator dated October 21, 1981^[8] consisted of 46 pages. His findings led to a recommendation for the dismissal of all charges as without substantial basis in law and in fact, except on two counts.

On these two counts, the report and recommendation follows:

"1. Respondent's two letters to Grace Tuazon (2nd Specification in Charge No. 1; pp. 293-195, Rollo).

There is no dispute that the two letters previously quoted in the synthesis of the testimony of Grace Tuazon was authored by the re-spondent judge.

According to the respondent he sent the two letters to Grace Tuazon because of the following: Mrs. Tuazon is a close friend of respondent's family and she often visited respondent's family, eating with them on several occasions and was particularly close with respondent's daughter, Ingrid, who had been a student of Mrs. Tuazon as Mrs. Tuazon is a public school teacher. He invited Mrs. Tuazon for some talk in his house after office hours because Ingrid learned of a rumor being circulated in Magallanes to the effect that Mrs. Tuazon was having illicit relations with a co-teacher in the high school and Ingrid, now in Manila, had asked her father, the respondent to contact Mrs. Tuazon and to inform her of the rumors and if possible to persuade her to be more discreet as she might be accused of immorality hence, he sent the letters dated August 4, 1975. Now, because Mrs. Tuazon did not see him the respondent again sent the second letter because on September 3, 1975 he was planning to go to Manila the next day and had wanted to bring some good news to his daughter, Ingrid, regarding the result of her request concerning Mrs. Tuazon. Hence he renewed his invitation to Mrs. Tuazon. Since Mrs. Tuazon again failed to see the respondent as asked in the second letter, the respondent went to Manila, told his daughter that he had invited Mrs. Tuazon but she did not care and that he found useless his going along with his daughter's request. The reason advanced by respondent for inviting Mrs. Tuazon to talk with him beyond 5:00 o'clock was that that was the only appropriate time for both of them considering that Mrs. Tuazon and he had their respective offices and official duties to attend to.

It is contended that there is no clear and convincing evidence that in writing the letters to Mrs. Tuazon constitutes misconduct or immorality.

We have to reject as unsatisfactory or unbelievable that the respondent, in sending the two letters (Exhibits "F" and "G") was motivated by the good intention of informing Mrs. Tuazon about the rumors that was circulating to the effect that she was having illicit relations with a co-teacher as allegedly requested of the respondent by his daughter, Ingrid. The testimony of the respondent was uncorroborated and it would have been easy to find witnesses to corroborate his testimony. There is no evidence that his daughter is not available to testify and corroborate her father's testimony and if it is true that there were rumors of the aforesaid illicit relations of Mrs. Tuazon with a co-teacher then those persons talking about the rumors should have been presented by the respondent for if there were no such witnesses then there will be no rumors at all.

In appreciating the significance of the two letters that she had received and which Mrs. Tuazon had considered as an insult, we have to consider the environmental milieu. Mrs. Tuazon is married but separated from her husband; the respondent is married but his wife does not live with him in Magallanes. As admitted by him, he is alone in his big house for which reason he had to ask at times the company of detention prisoners to sleep with him. As stated in the letter of August 4, 1975 (Exhibit "F") the respondent stated that he had been waiting for Mrs. Tuazon the night before until 8:00. Why would he have to wait until that time? Was the request of his daughter Ingrid to tell her about the rumors that important that the respondent had to wait for Grace Tuazon until 8:00 o'clock in the evening and to tell her again under the second paragraph in the letter that he will be waiting for her in his office in his house, with the addendum that she should please not fail. Why would the respondent write this? Now, in the second letter dated September 12, 1975 (Exhibit "G") respondent again asked Mrs. Tuazon to see him in his office in his house any time from 6:00 p.m. about a very important matter that should be kept a secret. Now, was the request of his daughter for respondent to tell Mrs. Tuazon about the rumors surrounding her a very important matter that should be kept a secret? It might be conceded even if the request of Ingrid was true, that the request was important but not very important. There was no need for the respondent to ask Mrs. Tuazon to keep it a secret for there were rumors any way so there was no secret to keep.

It is, therefore, concluded that the writing and sending of these letters was motivated by or creates a suspicion of an immoral purpose. It may be argued that nobody may ever be held accountable for an immoral intention not coupled with an act to implement the intention but his letters constitute overt acts to open the door for the commission of an immoral purpose. Under the environmental milieu as heretofore stated, the writing and sending of the two letters is highly unbecoming of a judge for which it is recommended that the respondent be suspended without pay for three (3) years.

"2. Habitual use of vulgar and obscene words and phrases on wedding ceremonies (2nd Specification in Charge No. 5; pp. 302-303, rollo.)

With respect to the second specification the respondent explained that during the celebration of the marriage between Carlito Navarro and Teresita Jarne, as well as in the other marriages he officiated, his practice is merely to give advice to the couple after the ceremonies on the usual causes of misunderstanding between couples during their married life, matters that he had read and gathered in the books by good authors; sometimes he touches on the topic of sexual maladjustment considering that marriage counsellors attribute to this single cause 80% of broken marriages; that among the books he had read is one written by Robert Armstrong, a preacher of the Ambassador University in America who gives lectures in more than thirty radio stations in America and who claims that 80% of marriages are due to sexual maladjustment. On the claim of Wilmor Hadap that the public were murmuring protests against the kind of advice he gives to married couples, respondent belied said claim by pointing out that, on the contrary, after said lectures the parents would even come to him complementing him of his practical and helpful advises.

The foregoing explanation may be true but it does not mean that what he advised during the wedding of Carlito

Navarro and Teresita Jarne on January 17, 1977 is not true, as follows: "You woman, you should satisfy sexually your husband otherwise your husband will look for another woman because the husband is sexually hot (oragon) and you man, you should continuously satisfy your wife otherwise your wife will look for another man."

The off-rostrum comments of the respondent in the rape case (specification 5(a) and his advice in the wedding 5(b) is not to be expected from a judge. Such gutter-language is even rarely heard in the slums. When used by a judge, respect for the entire judiciary plummets to levels where people begin to doubt the moral standard of judges and their capacity and fitness to dispense justice. The Canons of Judicial Ethics, particularly Canon No. 3, which provides:

"3. Avoidance of appearance of impropriety. - A judge's official conduct should be free from appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach."

has been thrown to the winds.

Under specification 5(a), the suspension of the respondent for two (2) years is recommended."[9]

In the consolidated recommendation, concluding his report,[10]the Investigator's summation follows:

"CONSOLIDATED RECOMMENDATIONS

"A 3-year suspension is recommended in specification 1(b) while a 2-year suspension is recommended in specification 5(b) but the respondent judge had previously been censured by the Supreme Court in *Espayos vs. Lee*, Administrative Matter No. 1574-MC, April 30, 1979. The penalties of censure and the recommended 5-year suspension should be consolidated into a single penalty for which Your Honors' Investigator respectfully recommends the dismissal of the respondent from the bench."[11]

Upon a review of the Investigator's report and recommendation, Deputy Court Administrator Arturo B. Buena observed in his Memo dated November 25, 1981, that respondent's explanation on charge No. 3, that of using prisoners/detained persons for personal purposes, cannot be considered satisfactory. Thus, Deputy Court Administrator Arturo B. Buena stated:

"Upon the other hand, the Inquest Judge, in resolving Charge No. 3 of Using Prisoners/detained Persons for Personal Purposes, perhaps overlooked the significance of Respondent's explanation on this charge particularly regarding the alleged notes that respondent sent to the Jailer mentioned in par. 3 of the Affidavit of Rustico Gonzales (p. 9, rollo) where respondent stated:

"Regarding the alleged notes I sent to the Jailer, (par. 3 of Affidavit of Gonzales); it is true I sometime send a note to the Jailer asking to send over to me a certain detainee for the following purposes:

- a) whether he can afford to post a bail bond or not;
- b) to ask him when he would like his case to be scheduled for arraignment or trial;
- c) to find out if he can afford the services of a de parte lawyer or would like the Court to appoint a de officio lawyer to defend him;
- d) explore the possibility of an amicable settlement; and
- e) other matters that would facilitate and speed up the proceedings of his case. (pp. 21-22, rollo).

"Although the above explanation negates the insinuation in the complaint that respondent used the prisoners concerned for personal ends, the above admission nevertheless exposes some irregularity in respondent's practices. Respondent does not have to call for the prisoners to his residence to answer the questions and/or

determine the action to be taken on the matters adverted to in the above explanation. All he had to do was set the cases for hearing and there ask the needed questions and determine once and for all the proper action to be taken under the circumstances."^[12]

We agree with the conclusion of Deputy Court Administrator Buena that respondent, as previously discussed, is guilty of the charges on three counts.^[13] We do not agree, however, to his finding that the recommended penalties of 3 years suspension without pay and 2 years suspension without pay, "finally capping it with a recommendation for the dismissal of respondent from the bench" are "too harsh and not commensurate, if not clearly out of proportion, to the offense charged proved."^[14]

We find it more in consonance with justice and a correct approximation of the penalty equivalent to the wrongs done, that consolidated penalty which is recommended by the Investigator, taking into consideration that respondent had been previously censured by this Court in *Espayos vs. Lee*, Administrative Matter No. 1574-MC, April 30, 1979.^[15]

WHEREFORE, respondent Judge Abelardo Lee is hereby **DISMISSED** as Judge of the Municipal Court of Bacon, Sorsogon, with forfeiture of retirement benefits and with prejudice to re-employment in any national or local government office or agency, including government owned or controlled corporation or instrumentality.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Guerrero, Abad Santos, De Castro, Plana, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Barredo, J., concurs. He believes that the use of services of prisoners is criminals.

Melencio-Herrera, J., on official leave.

Relova, J., no part.

[1] pp. 2-3, Rollo.

[2] p. 2, Id.

[3] pp. 4-9, Id.

[4] p. 12, Id.

[5] pp. 20-25, Id.

[6] p. 2 of Deputy Court Administrator Buena's memo.

[7] p. 49, Rollo.

[8] pp. 258-304, Id.

[9] p. 7 of Justice Buena's memo.

[10] p. 304, rollo.

[11] Id.

[12] pp. 11-12, Memo dated Nov. 25, 1981 by Deputy Court Administrator Arturo Buena.

[13] p. 12, Id.

[14] p. 11, Memo by Deputy Court Administrator Arturo Buena.

[15] p. 304, Rollo.

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