

GEORGE L. KAW, COMPLAINANT, VS. JUDGE ADRIANO R. OSORIO, RTC BRANCH 171, VALENZUELA CITY, RESPONDENT.

A.M. No. RTJ-03-1801. March 23, 2004

Ponente: CORONA, J.

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CORONA, J.:

This is a complaint filed by George L. Kaw against Judge Adriano R. Osorio of the Regional Trial Court of Valenzuela, Metro Manila, Branch 171, for dishonesty, extortion, graft and corruption, and violation of Rule 5.04, Canon 5 of the Code of Judicial Conduct relative to the conduct of the trial and adjudication of Criminal Case Nos. 10029-V-90 to 10035-V-90 entitled *People of the Philippines vs. Benito Go, Wilson Go and John Tan* for estafa and Criminal Case No. 613-V-91 entitled *People of the Philippines vs. Roberto Go and Benito Go* also for estafa.

In his answer dated January 12, 1999, respondent judge vehemently denied all the material allegations in the complaint. He alleged that the charges were baseless and that the only motive of complainant was to harass, smear and malign his name.

In a resolution dated March 13, 2000,[1] the Court referred the case to Associate Justice Elvi John Asuncion of the Court of Appeals for investigation, report and recommendation.

Culled from the records, the facts of the case, as summed up by Investigating Justice Asuncion, are as follows:

Complainant George L. Kaw avers that while Criminal Cases Nos. 10029-V-90 to 10035-V-90 were ongoing in the early part of May 1993, he was approached by a state prosecutor who said that he was sent by Judge Osorio to ask if the complainant wanted to be assured of a favorable judgment in the criminal cases which the latter had filed and were heard by the judge. The judge's emissary told George Kaw that a favorable decision in all cases would cost P100,000.00, P40,000.00 of which was to be paid immediately and the balance of P60,000.00 to be handed over upon promulgation of the judgment in all cases.

As an initial reaction, complainant avers that he did not want to accept the offer since he had adequate evidence for the conviction of the accused, but at that time, he felt he had no choice but to accept the offer of Judge Osorio and thought that if he would reject it, he would lose all his cases. So, he relented and accepted the offer. As a consequence, in the morning of May 18, 1993, according to the complainant, he handed over to the state prosecutor the amount of P40,000.00 for delivery to Judge Osorio which turned out to be only the first of a series of payments requested by and made to Judge Osorio. As narrated by the complainant, to wit:

- July 22, 1994, Friday

Judge Osorio called me up at my office and informed me that his wife died. My wife and I went to the wake of the wife of Judge Osorio at a funeral parlor located at Araneta Avenue, Quezon City and while there handed to the latter a UCPB Check bearing number 46193 in the amount of P5,000.00, a photocopy of which is hereto attached as Annex "A."

- December 13, 1994, Tuesday

Judge Osorio, through the state prosecutor, requested for a meeting with me at the Steaktown restaurant located at West Avenue, Quezon City as per charge invoice #23764 and #7933 dated December 13, 1994 hereto attached as Annex "B1" and "B2," at the meeting attended by me and my wife, Judge Osorio asked for the amount of P10,000.00 which he said he needed very badly. Since I had cash with me at that time, I gave the amount to Judge Osorio. After I handed over the money to Judge Osorio, I asked him whether the amount of P10,000.00 given that day would be deducted from the agreed balance of P60,000.00, Judge Osorio said that the P10,000.00 had nothing to do with the balance of P60,000.00.

- March 16, 1995, Thursday

The son of Judge Osorio solicited from me the amount of P1,000.00 allegedly for a certain project. I accommodated this solicitation after the State prosecutor called me by telephone and asked me to help the son of Judge Osorio.

- March 15, [sic-no year indicated] Tuesday

Judge Osorio's daughter called me up by telephone and informed me that it was her father's birthday and was inviting me and my wife to their residence. My wife and I then went to his house located at #44 M. H. del Pilar St., Tugatog, Malabon and gave him the amount of P10,000.00.

- On one occasion, Judge Osorio told me that my lawyer was not performing well and that I should change him. He suggested that I engage the services of the Law Firm of Quijano, Padilla and Natividad where his brother-in-law, Marcelino Bunag, is connected, to facilitate, according to him, the decisions of the cases. Judge Osorio even gave me the address and telephone number of said law firm.

- Not wanting to displease Judge Osorio on May 10, 1996 at about 5 o'clock in the afternoon, I visited the Quijano, Padilla and Natividad Law Offices with address at 320 Escolta corner T. Pinpin Street. When I talked to Mr. Bunag, he asked for the amount of P200,000.00 as acceptance fee and guaranteed that I will win all my cases before Judge Osorio."

Since the amount being asked by Mr. Bunag was too stiff, and I was not impressed with the office of the law firm represented by Mr. Bunag and suggested by Judge Osorio, and considering that I already had an agreement with Judge Osorio with respect to the pending cases before him, I did not hire the services of Quijano, Padilla and Natividad Law Offices. I nonetheless as suggested by Judge Osorio, replaced my lawyer.

Complainant avers that relative to Criminal Case No. 613-V-91, when the prosecution and the defense terminated the presentation of their evidence, accused Benito Go and Roberto Go moved for the reopening of the cases on the ground that they were not given their day in court and assured the complainant that if the cases will be reopened, they will confess to the court that the mastermind in the swindling was accused Wilson Go. The court denied the motion and scheduled the date of the promulgation of the decision in the cases on August 29, 1997 at 8:30 a.m.

On the first week of August 1997, complainant decided to see Judge Osorio at his residence in order to confront him about the rumors spreading from reliable sources that Wilson Go was bragging because he was sure to be acquitted in the criminal cases which were filed against him and was heard to say that Judge Osorio agreed to acquit him in consideration of the amount of almost a million pesos. He asked the judge if it was true that aside from his commitment to the complainant, he also committed himself to accused Wilson Go. Before answering, the judge allegedly kept quiet for some time and told complainant that the case against Wilson Go was weak and that the case is being reviewed by his clerk of court. The judge further assured him not to worry after complainant's reminder about their agreement.

Not being reassured, complainant reported the matter to the state prosecutor and sought his help.

On August 25 or 26, 1997, the complainant called up Atty. Gregorio Y. Narvasa, II in order to seek his counsel. Upon narration of the events that transpired, complainant pleaded Atty. Narvasa to accompany him and the state prosecutor to see Judge Osorio at his residence since he was one of the lawyers handling one of the cases against Benito Go and Wilson Go. Complainant feared that if the accused would be acquitted in said criminal cases, they may be forever barred from being charged criminally for the wrong that they had committed against him. Atty. Narvasa acceded to the request under the following conditions: (1) he would not talk to the judge; (2) they would ask the judge to decide the case on its merits; and (3) whether or not Judge Osorio rules for or against the complainant, the latter will file an administrative case against the judge before the Supreme Court.

On August 28, 1997, Atty. Narvasa, the state prosecutor and the complainant arrived at the residence of Judge Osorio wherein they were led to the sitting room and asked to wait for him. When Judge Osorio arrived, the state prosecutor reminded him of the scheduled promulgation of judgment the following day. The judge told them he cannot tell them what his decision was before the actual promulgation of judgment and made remarks to the effect that his decision of cases are always based on the evidence.

Shortly before the promulgation of the decision, the complainant learned that the state prosecutor filed a motion to inhibit the judge. The prosecutor told him that it was Judge Osorio who prompted the motion and dictated the reasons and grounds to be alleged in the motion, to wit:

- That with all due respect to the Presiding Judge, complainant received reliable information that some of the accused have been bragging that they have won the case and were able to secure judgment of acquittal through the intercession of persons very closed (sic) to the judge;

- That in fairness to the Honorable Presiding Judge and to give peace of mind to the complainant, the undersigned State Prosecutor deems it proper and logical that the Honorable Judge inhibit himself from taking further action on the instant case and transfer the same to another Branch of equal competence and integrity;

- That this Motion is not intended to mean that the prosecution as well as the complainant have lost faith in the honesty and integrity of the Honorable Presiding Judge but solely because of the above-stated reason.

X X X

X X X

X X X

Upon receiving the motion, the Court postponed the promulgation of the decision and required counsels for the accused to file their comment to the motion within ten (10) days therefrom.

On September 4, 1997, complainant's brother Valentino Kaw came and informed him about the conversation he had with Wilson Go regarding the subject criminal cases. According to Valentino Kaw, Wilson Go said that: (1) he was sure to be acquitted; (2) the motion filed by the prosecution for the inhibition of Judge Osorio would be denied; (3) the decision in the criminal cases were already made; (4) he (Wilson Go) held Judge Osorio by his neck because he had given to the Judge close to a million pesos; (5) he used his lawyer to get to and influence Judge Osorio; and (6) his acquittal was merely a matter of money. (Annex "D," affidavit of Valentino Kaw)

On September 16, 1997, Judge Osorio issued a Resolution denying the motion for inhibition and setting the

promulgation of decision of these cases on September 22, 1997 at 8:30 a.m. A motion for reconsideration of the Resolution dated September 16, 1997 was filed but was subsequently denied.

On September 22, 1997, the decision was promulgated, the dispositive portion of the joint decision reads:

WHEREFORE:

CRIMINAL CASE NO. 10029-V-90

Accused Benito Go is Guilty beyond reasonable doubt of the offense charge (sic), he is hereby sentenced to suffer an indeterminate imprisonment from TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal, as minimum, to FIFTEEN (15) YEARS of Reclusion Temporal, as maximum with the accessory penalties prescribed by law to pay the offended party the amount of P100,020.20 and to pay the costs.

Accused John Tan and Wilson Go are hereby [a]cquitted with costs de oficio.

CRIMINAL CASE NO. 10030-V-90

Having proven the guilt of accused Benito Go beyond reasonable doubt, he is hereby sentenced to suffer an indeterminate imprisonment from SIX (6) YEARS and ONE (1) DAY of Prision Mayor as minimum, to NINE (9) YEARS of Prision Mayor, as maximum, with the accessory penalties prescribed by law and to pay the offended party the sum of P34,255.20 and to pay the costs.

For failure of the prosecution to prove the guilt of accused Wilson Go and John Tan beyond reasonable doubt, they are hereby ACQUITTED of the offense charged with costs de oficio.

CRIMINAL CASE NO. 10031-V-90

The prosecution have established the guilt of accused Benito Go beyond reasonable doubt[. H]e is hereby sentenced to an indeterminate imprisonment from TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal, as minimum to FIFTEEN (15) YEARS of Reclusion Temporal, as maximum with the accessory penalties prescribed by law and to pay the costs of suit.

Accused Wilson Go and John Tan are hereby ACQUITTED of the offense charged with costs de oficio.

CRIMINAL CASE NO. 10032-V-90

Having established the guilt of accused Benito Go beyond reasonable doubt, he is hereby sentenced to an indeterminate imprisonment from SIX (6) YEARS and ONE (1) DAY of Prision Mayor, as minimum to TEN (10) YEARS of Prision Mayor, as maximum with the accessory penalty prescribed by law and to pay the offended party the amount of P50,000.00, and costs of suit.

For failure of the prosecution to prove their guilt beyond reasonable doubt, accused Wilson Go and John Tan are hereby ACQUITTED with costs de oficio.

CRIMINAL CASE NO. 10033-V-90

Accused Benito Go having been found guilty beyond reasonable doubt, he is hereby sentenced to suffer an indeterminate imprisonment from SIX (6) YEARS and ONE (1) DAY of Prision Mayor, as minimum, to NINE (9) YEARS of Prision Mayor, as maximum, with the accessory penalty prescribed by law and to pay the offended party the sum of P37,500.00 and the costs of suit.

Not having proven guilty beyond reasonable doubt, accused Wilson Go and John Tan are hereby [a]cquitted with costs de oficio.

CRIMINAL CASE NO. 10034-V-90

Accused Benito Go guilty beyond reasonable doubt, he is hereby sentenced to an indeterminate imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal, as minimum, to TWENTY (20) YEARS of Reclusion Temporal, as maximum, and to pay the offended party the sum of P445,000.00 with accessory penalty prescribed by law and the costs of suit.

Accused Wilson Go and John Tan are [a]cquitted with costs de oficio.

CRIMINAL CASE NO. 10035-V-90

Accused Benito Go, Wilson Go and John Tan are hereby [a]cquitted on ground of reasonable doubt with costs de oficio.

CRIMINAL CASE NO. 613-V-91

Accused Benito Go and Robert Go [g]uilty beyond reasonable doubt, they are hereby sentenced each to an indeterminate imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal, as minimum, with the accessory penalties prescribed by law and to pay the offended party the amount of P150,000.00 and the costs of suit.

SO ORDERED.

Complainant avers that the joint decision itself favors Wilson Go in every aspect and is against Wilson Go's enemies. The fact of the death of Benito Go was made known to Judge Osorio. Accordingly, Benito Go's criminal liability was extinguished. However, complainant submits that Benito Go was still convicted in consonance with Judge Osorio's plan to conceal his illicit action in exonerating Wilson Go. With regard to the conviction of Roberto Go, complainant avers that it is an act of vengeance against Roberto Go who had filed a number of criminal, civil and administrative cases against Wilson Go which are pending before the courts and the Securities and Exchange Commission. As for John Tan, he was acquitted because he gave the amount of P70,000.00 to the judge.[2]

In his defense, Judge Osorio submits that the complaint against him was completely without merit for the following reasons:

- Respondent was not present in the following instances: when State Prosecutor Bernard S. Razon allegedly approached complainant at the Municipal Hall of Valenzuela and asked the amount of P100,000.00 in consideration for a favorable decision in the said criminal cases and when the alleged partial payment in the amount of P40,000.00 was given to State prosecutor Bernard S. Razon.
- State prosecutor Razon denied both in his affidavit and testimony the fact that respondent sent him to complainant and offered favorable judgment in the said criminal cases for money consideration.
- Complainant's claim that he accommodated the solicitation of respondent's son, Christian Osorio, in the amount of P1,000.00 for a certain project after State Prosecutor Razon called him by telephone and asked him to help the son of Judge Osorio is belied by the fact that complainant did not bother to ask the name of the person and what the solicitation is all about.

- Respondent denied having called up complainant to inform the latter of his wife's death and requested for financial assistance from him and averred that complainant and his wife came to know of the death of his wife when the hearing for Criminal Cases Nos. 10029-V-90 to 10035-V-90 was postponed due to the death of respondent's wife and the clerk of court issued a Constancia on such date to that effect.

- Respondent insists that he does not know who received the UCPB Check No. 46193 in the amount of P5,000.00 with the notation "condolence" at its dorsal side and has no knowledge how said check was given. Respondent was so depressed and confused that he did not pay attention to the "abuloy" given by his friends and legitimate sympathizers who paid respect to his departed wife, a deeply[-]rooted Filipino customs (sic) and traditions (sic).

- Respondent stoutly denies that he requested State Prosecutor Razon for a meeting with complainant at the Steaktown Restaurant at West Avenue, Quezon City on December 13, 1994. Complainant and wife do not have positive proof that respondent was in the said restaurant on that date.

- Respondent never criticizes the performance of any lawyer nor advises any complainant to change his private prosecutor. To insist therefore that respondent's brother-in-law Marcelo Bunag recommended or suggested to complainant to engage the legal services of the law firm of Quijano, Padilla and Natividad with whom Bunag is sharing an office space and guaranteed that complainant would win all his cases before Judge Osorio, is a blatant lie.

- Respondent's daughter Marian Rose Zaragosa could not have invited complainant and wife to attend the birthday party of his (sic) father in the latter's residence at No. 44 M. H. del Pilar St., Tugatog, Malabon, Metro Manila on March 5, 1996 since a birthday party was tendered by her and her husband Teddy Zaragosa at their residence in Ayala Alabang Village, Muntinlupa City on that date after respondent conducted a hearing in a criminal case (Criminal Case No. 5215-V-95, People vs. Boyet Gonzales, et al.) in the courtroom located inside the compound of the Bureau of Corrections at Muntinlupa City from 2:00 to 4:00 in the afternoon of March 5, 1996.[3]

In his report, Investigating Justice Asuncion found that there was evidence that the alleged initial payment of P40,000 was handed over to State Prosecutor Razon for delivery to respondent. The only evidence presented was the notation in the diary of complainant's wife, Mrs. Alice Kaw, concerning a certain UCPB check no. KAR007616 dated May 1993 in the amount of P40,000. Such notation could easily be fabricated, however, as the diary was solely in the control of complainant and his wife. Nevertheless, the protestations of innocence of respondent judge cannot be given credence entirely either, considering that certain actuations of his arouse suspicions of judicial impropriety. Investigating Justice Asuncion, after weighing the evidence presented before him, made the following findings and recommendations:

[1. Respondent's denial that he requested State Prosecutor Razon to arrange meeting between him and complainant at the Steaktown Restaurant and that he received P10,000 from the latter on said occasion.]

In one instance, Fiscal Razon admitted having accompanied Judge Osorio at the Steaktown for a meeting but immediately left the restaurant without eating any lunch. Such statement contradicts the testimony of Judge Osorio who testified that he never went to Steaktown to meet the complainant and was never accompanied by

Prosecutor Razon. However, in order to mend the favorable allegation by the prosecutor, when respondent judge was cross-examined after the testimony of prosecutor Razon, he declared that they went to Kowloon House because he likes to eat fish and not to Steaktown.

[2. Respondent's silence on complainant's allegation that he, together with his counsel, Atty. Gregorio Narvasa and Prosecutor Razon visited the former in his house, a day before the original schedule date for the promulgation of the decision.]

In another occasion, Prosecutor Razon admitted that he accompanied the complainant and Atty. Narvasa to Judge Osorio's residence. However, he insists that his sole reason for accompanying George Kaw and Atty. Narvasa to the residence of Judge Osorio in Valenzuela is to seek the postponement of the hearing in the criminal case the next day. This is highly unlikely, if not improbable, since a prosecutor for ten years will not waste his precious time for a seemingly mundane matter.

Indeed, motions for postponement can be filed and acted upon addressed to the sound discretion of the court, considering the peculiar circumstances obtaining in each case and with the view of doing substantial justice, such discretion must be exercised wisely. The basis for its grant or denial depends upon the reasonableness of the postponement and the merits of the case of the movant but is always predicated on the consideration that more than the convenience of the courts or of the parties of the case, the ends of justice and fairness would be served thereby (*Zubiri vs. Zubiri*, 18 SCRA 1157).

In that way, Fiscal Razon should not have exposed himself to the suspicion that he was partial. Suffice it to state that such practice should be discouraged or should not be tolerated because it generates the impression that fiscals would be able to fix the cases assigned to them and can manipulate or maneuver them.

When pressed to discuss the topic further, Fiscal Razon was evasive. Upon being asked if there was any other reason for their going to the house of Judge Osorio, Fiscal Razon answered that he did not inquire any further as he deemed it a private matter between the parties.

On account of the facts involved as well as his impression on what transpired under the circumstances, Atty. Gregorio Narvasa, II testified for the complainant and narrated the following, viz:

Q

Did you reach the residence of Judge Osorio?

A

Yes, sir.

Q

What transpired when you reached the residence of Judge Osorio?

A

All of us went except the driver. The three of us. Fiscal Razon, myself and Mr. George Kaw, sir, had gone down and, it was first Mr. Kaw who approached the helper of the house and asked if the Judge was there, and he was informed that the judge was not yet there.

Q

What happened when you arrived at the house of Judge Osorio and you were informed that Judge Osorio was not [in] the house?

A

I remember Mr. Kaw asked if the Judge is expected to arrive, sir.

Q

And who did he ask, Mr. Witness?

A

The helper, sir.

Q

Were you able to overhear . . . ?

A

No, but Mr. Kaw told me what was told to him, sir.

Q

And what did he tell you?

A

He told me that the judge was not yet home at that time, sir.

Q

So, what did you do while waiting or if you waited?

A

We were asked inside which I found also very odd.

Q

By the way, what was your impression about Mr. Kaw asking the helper about the arrival of Judge Osorio?

A

From the time of asking and the time that we were asked to enter, as I said, I found it very odd sir, because we were allowed to get inside as if ... my impression was that the person knew already Mr. Kaw.

Q

And having entered, where did you wait inside the house of Judge Osorio?

A

In the sala. We passed through the area. I remember there were some construction going on at that time. We passed through the kitchen and were led towards the area where there was a sofa. It looks like a sala of the house, sir.

Q

Now, Mr. Witness, at the time you were waiting did you have any discussion among yourselves while you were waiting for Judge Osorio?

A

We will object to that, Your Honor. Leading. No basis.

Q

Now, Mr. Witness, do you recall if Judge Osorio did indeed return, he indeed arrive at this house that day?

A

Yes, sir. After about twenty or thirty minutes of waiting, sir.

Q

What transpired when Judge Osorio arrived?

A

When Judge Osorio arrived I had noticed that — when Judge Osorio arrived, my impression is, when he saw us as if he saw a ghost. That is my impression, and he stopped walking towards us and then he continued walking as if

collecting his thoughts, if he could have run away, he could have done it.

Q And did — after he approached you, what happened after that?

A Well, we introduced ourselves. Judge Osorio, he was very formal but also very cold. I could feel, he did not want us there. What happened next was that Fiscal Razon, he said reminding him we were there because of the scheduled promulgation of judgment in the case of Mr. Kaw.

Q

And did Judge Osorio reply to the reminder of Fiscal Razon, if you recall?

A

Well, Judge Osorio said that, I would think, because Fiscal Razon was talking of promulgation of judgment the following day, Judge Osorio replied that, of course, he could not tell us before hand what his decision would be.

Q What else happened after that, if you recall?

A Judge Osorio also said that his decision always is based on the evidence and merits of the case, sir.

Q

At that time, do you remember if you ever said anything during the conversation?

A

Well, they kept to their word. I was courteous. I said, Good afternoon Judge. What I told the judge was, good afternoon. Probably some small talks regarding, I barely said a word then, sir.

Q

After Judge Osorio's statement that he will decide the case on the merits, what happened after that?

A He said he decides cases on the merits.

Q What did he say after that?

A Well, some small talks for a very brief moment. I remember, since I felt at that time that the purpose for being there was already made. I signaled Mr. Kaw that it is time for us to leave, sir.

Q

And did you in fact leave?

A Yes, sir.

Q How long did you stay in the house of Judge Osorio?

A It was very brief. About fifteen minutes or about that long, sir.

Q

When you said fifteen minutes, you are referring to the fact that, of the discussion with Judge Osorio?

A Yes, sir. From the time that he arrived up to the time that we — you see it did not happen very long. I would think, about fifteen minutes, sir.

Q And after you left, where did you go, Mr. Witness?

A We had (sic) brought back Fiscal Razon to the Municipal Hall, sir.

Q While returning to the Municipal Hall do you recall having discussed any matter involving your visit to Judge Osorio?

A Yes. We were talking about the fact that — what we all noticed and what was very prominent at that time, which was the discussion when we were on our way back was the way Judge reacted.

Q And after having — were you able to return Fiscal Razon to the Valenzuela Municipal Hall?

A Yes, sir.

Q From there where did you proceed?

A Mr. Kaw and I had lunch, sir.

Q

And did you discover anything about the case after this incident?

Atty. Meris: Objection. The question is vague, Your Honor.

Justice Asuncion: Objection sustained

Q After this incident did you inquire or did you recall having inquired from Mr. Kaw what transpired thereafter?

A My recollection is the day after Mr. Kaw and I had an appointment with Fiscal Razon, I don't recall who initiated the call whether it was Mr. Kaw or .. but what I recalled was he told me about the motion for inhibition having been filed by Fiscal Razon at the instance of Judge Osorio, sir.

Q Did you discuss any other matter aside from that?

A I was telling Mr. Kaw then at that time, it was quite odd also at that time, because I remember then that he had a private prosecutor at that time. So, that is quite odd also. The private prosecutor had no participation whatsoever in that motion for inhibition.

Q How did you know that the private prosecutor had no participation in that motion for inhibition?

A Because it was Fiscal Razon who filed the motion for inhibition, sir.

Q

No further questions, Your Honor. (TSN, August 23, 2000, pp. 22-46).

[3. Respondent's denial of having called complainant to inform him of the death of his wife.]

Judge Osorio admitted having received P5,000.00 during the wake of his wife but he allegedly did not give serious thought as to who gave the said amount which he termed as "abuloy," a Filipino tradition. The testimonies of respondent judge and his children, Christian and Marian Rose, were one in declaring that nobody pays attention to the "abuloys" to the effect that nobody recollects receiving the check of the Sps. Kaw.

At another instance during the investigation, respondent judge argued that he does not know of said amount nor the issuance of the check because he was not present at the funeral parlor for 2 days from 6:00 p.m. to 12:00 midnight upon the advice of the doctor. Such statement deviates from the ordinary course of human

behavior since visitors normally come between 8:00 and 12:00 midnight and it is unlikely that respondent was not present at the funeral parlor at that time.

After weighing the evidence presented, it would seem that Judge Osorio was indeed aware of the money given by the Kaws on the occasion of his wife's death. Evidence shows that Judge Osorio signed the back of the check beside the signatures of George and Alicia Kaw and the same was in fact encashed at the bank by Judge Osorio. Furthermore, respondent's effort to conceal the truth and denials turned futile when, during the hearing of this case on September 18, 2000, counsel for the complainant manifested that respondent judge returned the amount of P5,000.00 but was refused by complainant.

Indubitably, respondent's act of accepting money and the previous instance of dealing with the complainant at his residence points (sic) to his culpability. By his conduct, he has stained the noble image of the judiciary. Judges should bear in mind that those involved in the administration of justice from the highest to the lowest level must live up to the strictest standard of honesty and integrity in the public service. (Mejia vs. Pamaran, 160 SCRA 457, 477)

A judge should, in pending or prospective litigation before him, be scrupulously careful to avoid such action as may reasonably tend to strengthen the suspicion that his social or business relations or friendship constitute (sic) an element in determining his judicial course.

[4. Respondent's denial of inviting or authorizing his daughter to invite complainant and his wife to his birthday party in his residence at Tugatog, Valenzuela.]

Anent the matter of invitation to complainant and wife for respondent's birthday party, the material period of time is from 2:00 p.m. to 4:00 p.m. wherein complainant alleges that he met the judge sometime at 3:00 p.m. in the latter's residence at #44 M. H. del Pilar St., Tugatog, Valenzuela. However, the judge declared that it was impossible for him to be at his residence at the said date and time considering that he attended a hearing in Bilibid Prisons, Muntinlupa City at 2:00 p.m. which impelled him to cancel the morning hearing in RTC Valenzuela.

If indeed the travel time from Valenzuela City to Muntinlupa City is two hours as testified to by herein respondent, then he could [have] left Valenzuela City at 11:00 a.m. and could have arrived in Muntinlupa before 2:00 p.m. or he could have left at 10:00 a.m. and could have arrived at 1:00 p.m. in the afternoon. It was gathered during the testimony of Ma. Rose Santos that the time periods were not strictly followed at the National Bureau of Corrections in Muntinlupa City because judges arrive on time or they arrive late. Generally too, cases are heard at the discretion of the judge and could be terminated early. His defense therefore that it was physically impossible for him to be at Valenzuela City at the said material date and time cannot be given credence.

When alleged as a defense, alibi must be established by positive, clear and satisfactory evidence, the reason being that it is easily manufactured and usually so unreliable that it can rarely be given credence. It is thus incumbent upon respondent judge to show that not only was he at some other place but it was physically impossible for him to be within the immediate vicinity. Here, respondent judge failed to satisfy the requirement of physical impossibility and no convincing proof was presented to substantiate his proffered defenses.

[5. On the Motion to Inhibit Judge Osorio filed by Prosecutor Razon upon the former's instruction.].

Next, regarding the motion to inhibit filed by prosecutor Razon, complainant alleged that said motion was filed upon instructions of Judge Osorio who dictated the reasons and grounds to be alleged therein. Prosecutor Razon admitted having filed said motion without conferring the same with the private prosecutor, and the respondent judge commended that it is only proper since the public prosecutor has the direct control and supervision over the case.

Although there is really no hard and fast rule when it comes to the inhibition of judges, this issue is a matter of

conscience and sound discretion on the part of the judge. Nevertheless, given the circumstances of this case, there was indeed a strong, valid and just reason for voluntarily inhibiting himself from the case. Based on the reasons and grounds stated in the motion, it is deemed more prudent to inhibit himself than to have a decision be put under a cloud of distrust and skepticism. In this sense, he would no longer be effective in dispensing justice to the parties in litigation. As declared in *Pimentel vs. Salonga*, 21 SCRA 160, viz:

xxx A Judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, if not altogether remote. xxx"

At the very sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no alternative but to inhibit himself from the case. When circumstances appear that will induce doubt as to his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the Court's (sic) of justice is not impaired. (*Gutang vs. Court of Appeals*, 292 SCRA 76, 85)

In view thereof, the undersigned finds that the less than scrupulous acts of the respondent is damaging to the reputation of a magistrate's most honorable professions (sic), where both public and private conduct should be beyond reproach. Under the Code of Judicial Conduct, a judge should avoid impropriety and the appearance of impropriety in all activities and a judge should perform official duties honestly, and with impartiality and diligence.

All told, respondent judge deserves to be penalized for his less than exemplary behavior.

[RECOMMENDATION:]

IN VIEW OF THE FOREGOING, it is hereby recommended that respondent Judge Adriano Osorio be suspended for a period of six (6) months without pay due to the impropriety of his acts which surely results in damage and corrodes the respect for law and the courts.

After a thorough review of the records, we hold that the findings of Investigating Justice Asuncion are adequately substantiated by the evidence and we therefore adopt them in toto except the recommended penalty of six-month suspension without pay.

While respondent judge may not necessarily be held liable for extortion and graft and corruption as it was not substantially proven, he should be made accountable for violating Canons 2 and 5 of the Code of Judicial Conduct:

CANON 2. — A JUDGE SHOULD AVOID IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

Rule 2.01 — A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

CANON 5 — A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES.

FINANCIAL ACTIVITIES

Rule 5.04 — A judge or any immediate member of the family shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law.

The Canons of Judicial Ethics further provide that “a judge’s official conduct should be free from the 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.”[4]

The spirit and philosophy underlying these Canons were explained in *Castillo vs. Calanog*: [5]

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge’s official life cannot simply be detached or separated from his personal existence. Thus:

Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.

A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.

Respondent judge’s conduct fell short of the standard expected of a magistrate of the law. His act of inviting complainant and his wife to his birthday party corroded public confidence in the integrity and impartiality of the judiciary, considering that complainant had a pending case in his sala. A judge is not only required to be impartial; he must also appear to be impartial.[6] Fraternizing with litigants tarnishes this image.

Respondent judge likewise openly transgressed Rule 5.04, Canon 5 of the Code of Judicial Conduct: a judge or any immediate member of the family shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law. Likewise, the Canons of Judicial Ethics expressly provides that a judge should not accept any present or favors from litigants or from lawyers practicing before him. As pointed out by Justice Asuncion:

After weighing the evidence presented, it would seem that Judge Osorio was indeed aware of the money given by the Kaws on the occasion of his wife’s death. Evidence shows that Judge Osorio signed the back of the check beside the signature of George and Alice Kaw and the same was in fact encashed at the bank by Judge Osorio. Furthermore, respondent’s effort to conceal the truth and denials turned futile when, during the hearing of this case on September 18, 2000, counsel for the complainant manifested that respondent judge returned the amount of P5,000.00 but was refused by complainant.

No position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the judiciary. A magistrate of the law must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as an epitome of integrity and justice.[7]

Violations of the Code of Judicial Conduct are serious offenses punishable by any of the following sanctions under Rule 140, Section 11 of the Rules of Court, as amended:

Sec. 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and

disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

- A fine of more than P20,000 but not exceeding P40,000.00.

Respondent judge retired upon reaching the mandatory retirement age of 70 on March 5, 2001. Consequently, it is no longer possible to impose the penalty of dismissal or suspension on him.

IN VIEW WHEREOF, a FINE of P40,000 is hereby imposed on respondent Judge Adriano R. Osorio for violation of the Code of Judicial Conduct and Canons of Judicial Ethics. The amount shall be deducted from his retirement benefits earlier ordered withheld pending termination of this case and the balance released to him in due course.

SO ORDERED.

Davide Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Vitug, J., on official business leave.

Panganiban, J., on official leave.

[1] Rollo, p. 77.

[2] Rollo, pp. 445-454.

[3] Rollo, pp. 455-457.

[4] Canon 3.

[5] 199 SCRA 75, 83 [1991], cited in *Gacayan vs. Pamintuan*, 314 SCRA 682, 697-698 [1999].

[6] Canon 3, Code of Judicial Conduct.

[7] *Cortes vs. Agcaoili*, 294 SCRA 423, 461 [1998], citing *Dia-Añonuevo Bercacio*, 69 SCRA 81, 89 [1975].

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