

PAZ ARELLANO TOLEDO, COMPLAINANT, VS.. ATTY., JESUS B. TOLEDO. RESPONDENT.*Adm. Case No. 266. April 27, 1963*

Ponente: PADILLA, J.

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This is a disbarment proceedings under Rule 128 of the Rules of Court.

On 9 July 1956 Paz Arellano Toledo filed in this Court a sworn complaint in the form of a letter alleging that she is the wife of Jesus B. Toledo, a member of the Bar;[1] that they were married on 27 December 1946 while he was still a second year student of law; that she supported him and spent for his studies; that after passing the bar examination and becoming a full-fledged member of the Bar he abandoned her; that he is at 'present employed in the Bureau of Mines[2] and stationed at Cagayan de Oro City; and that he is cohabiting with another woman who had borne him three children. She prayed that the respondent be disbarred from the practice of law. On 11 July 1956 this Court directed the respondent to answer the complaint within ten days from receipt of notice and a copy of the complaint.[3] The respondent mailed his" answer in the form of a letter, which was received in this Court on 4 October 1956, averring that the complaint was not in due form because "It does not set out distinctly, clearly and concisely the legal causes for the suspension or disbarment of a member of the Philippine Bar as provided in the Rules of Court," hence his "answer could not be made in the logical sequence of a formal pleading;" that there seems to be an irregularity in the filing of the complaint because while the letter-complaint was dated 25 June 1956 and received at the Docket Section of this Court on 2 July 1956 by an employee whose initials are "A. L.,"[4] it was subscribed and sworn to before a notary public on a later date, 5 July 1956; and that the alleged information furnished by Esperanza D. Almonte that the, respondent was cohabiting with another woman who had borne him three children is not true because her very informant, whose true name is Leoncia D. Almonte, executed an affidavit to the effect that the respondent was employed in the Bureau of Lands, riot in the Bureau of Mines, and that the three children referred to by the complainant were the children of Mr. and Mrs. Ruperto LI. Jose, with whom the respondent was boarding. Attached to his answer are the affidavit of Leoncia D. Almonte and a copy of his answer to a complaint filed by the complainant with the Director of Lands for abandonment and immorality. On 9 October 1956 this Court referred the case to the Solicitor General for investigation, report and recommendation and on 11 October 1956 the record of the case was received by the Office of the Solicitor General. On 19 November 1956, 1.0 December 1956, 7, 8, 14 and 15 February 1957, 18 March 1957 and 5 August 1957, the office of the Solicitor General conducted hearings during which the complainant presented her evidence both oral and documentary and the respondent, who appeared in his own behalf, cross-examined her witnesses. The respondent did not present evidence in his behalf but reserved the right to present it under the provisions of section 6, Rule 128. After finding that there is sufficient ground to proceed against the respondent, on 24 July 1958 the Solicitor General filed a complaint in this Court charging the respondent with abandonment; of his wife and immorality for cohabiting with another woman by whom he has a child, and praying that he be disbarred or suspended from the practice of law. On SO July 1958 the Clerk of Court sent to the respondent by mail a copy of the complaint filed by the Solicitor General and directed him to answer the same within 15 days

from receipt thereof, pursuant' to section 5, Rule 128. On 28 August 1958 the respondent filed in this Court a motion to dismiss the complaint on the ground "that the charges contained therein are not based on and supported by the facts and evidence adduced at the investigation, conducted by the Office of the Solicitor

General." On 2 September 1958 this Court set the case for hearing on 17 September 1958 at 9:31) o'clock in the morning. On 13 September 1958 the respondent filed a motion praying that his motion to dismiss filed on 28 August 1958 be first resolved or, that, should it be denied, he be given a period of ten days within which to file an answer; that upon receipt of his answer the case be returned to the Solicitor General for reception of his evidence pursuant to section 6, Rule 128; and that the hearing of the case set for 17 September 1958 at 9:30 o'clock in the morning be held in abeyance pending resolution of his motion. At the hearing of the case on 17 September 1958, counsel for the respondent appeared and was given a period of 15 days within which to submit a written memorandum in lieu of oral argument and the Solicitor General the same period of time from receipt of a copy of the respondent's memorandum within which to reply. On 22 October 1958, within the extension of time previously granted, the respondent filed his memorandum and on 17 November 1958, also within the extension of time previously granted, the Solicitor General, his memorandum in reply.

Section 6, Rule 128, provides:

The evidence produced before the Solicitor General in Ms. investigation may be considered, by the Supreme Court in the final decision of the case, if the respondent had an opportunity to object and cross-examine. If in the respondent's answer no statement is made as to any intention of introducing additional evidence, the case shall be set down for hearing, upon the filing of such answer or upon the expiration of the time to file the same. (Italics supplied)

The above-quoted rule in no uncertain terms requires the respondent in disbarment or suspension proceedings from the practice of law to file an answer to the complaint filed by the Solicitor General after investigation and, should he desire to present, evidence in his, behalf, to expressly say so in the answer. Instead of doing what the rule requires, the respondent filed a motion to dismiss without stating that he intended to present evidence in his behalf, thereby waiving his right. The fact that at the close of the hearing conducted by the Solicitor General, he made of record his desire to present evidence in his behalf, is not sufficient. The correct manner and proper time for him to make known his intention is by and in the answer seasonably filed in this Court.

The complainant testified as follows:. On 27 December 1946 she, a dentist by profession, and the respondent, then a second year law student, were married civilly in Camiling, Tarlac, by the Justice of the Peace (Exhibit A). For a period of two weeks after their wedding, they lived in the house of her parents at No. 76 General del Pilar street in Camilng. After two weeks, the respondent went to Manila to resume his studies at' the Far Eastern University,[6] and she remained in Camiling to practice her profession. While the respondent was still studying, he either returned to Camilng once a week or she came to Manila twice a week to visit with each other. Sometimes the respondent stayed with her in Camiling for a week, and when she came to Manila to buy dental materials she slept with him at his boarding house or at the house on Economia street where he later on lived with his brothers Cleto' and Aniceto and cousin Felisa Bacera, who cooked their meals for them. They were in good terms until about three or four months before his graduation. On the day of his graduation he showed her indifference and humiliated and embarrassed her by calling her a "provinciana" and telling her that she was a nuisance whenever she came to see him. Nevertheless, being his wife, she continued to see him while he was reviewing for the bar examination. She specifically mentioned that three days before the last examination, she came to see him. A week after the bar examination, she again came to see him. Since then they became actually separated and she never saw him again until the hearing of the case. Through Mrs. Esperanza Almonte, she learned that the respondent was employed in the Bureau of Lands and stationed at Cagayan de Oro City. The respondent never wrote to her

and asked her to follow him at his place of work and she did not care to either.

Marina Payot gave the following testimony: From 28 February to 3 June 1955 she lived and Worked as maid, laundress and cook for the respondent and his family composed of himself, Mrs. Corazon Toledo and their child in Malaybalay, Bukidnon. The respondent and Corazon Toledo lived as husband and wife, and have a child named Angie who was less than a year old at the time she lived with them. The couple slept together in the same room with their daughter Angie and ate their meals together although sometimes Corazon ate alone when the respondent was out somewhere. The respondent used to call Corazon "Honey" and Corazon used, to call the respondent "Jess". Corazon Toledo is not the same person as the complainant.

Lino Domingo testified in the following manner: He is employed as operator-mechanic in the Bureau of Public Highways in Malaybalay, Bukidnon, and has resided there since 1952. He knows the respondent because he headed a survey party that surveyed public lands in Malaybalay for distribution to the landless. Sometime in March 1955 he went to the respondent's place of residence and office at Moreno street, where his friend Mr. Nieva, an Ilocano, also resided, to apply for a parcel of public land, and about ten times he went to the respondent's place of residence and office. Among those who lived with the respondent were Mrs. Corazon Toledo, Mr. Nieva, a maid and Mr. Abad (the latter only slept at the place whenever he was in town). He knew that Corazon Toledo, who is not the ' same person as Paz Arellano Toledo, was the wife of the respondent. At the respondent's place of residence and office, he saw a room where the respondent, Corazfin and a baby slept and where man's pajamas and shirts were hung. One day at about 2:00 o'clock in the afternoon; while the respondent and his (the witness') friend Mr. Abad were repairing the front mudguard and seats of a station wagon behind the respondent's place of residence and Office, his friend 'Mr. Abad introduced him to the respondent. He helped Abad place the seats of the station wagon in their proper places and while he was helping . Abad, he heard the respondent address Corazon as "Mama" and ask her for money to buy cigarettes. His friends Nieva and Abad used to address Corazon as "Mrs. Toledo."

The respondent admits that he is married to the complainant (p. 14, t.s.n.). The fact that he is cohabiting with another woman who had borne him a child has been established by the testimony of Marina Payot and Lino Domingo, whose sincerity and truthfulness have been put to a severe and searching test by the investigating Solicitor in the presence of the respondent who appeared in his own behalf and cross-examined the witnesses during the investigation. Asked by the investigating Solicitor how she came to testify at the investigation, or whether anybody taught or coached her on what to testify or whether she testifies because of any promise of reward or consideration, Marina Payot without hesitation and in a straightforward manner answered that the complainant, Mr. Domingo and Mr. Reyes (the latter is the complainant's counsel) spoke to her and told her to tell nothing but the truth about the respondent's affair with his paramour in' Malaybalay; that nobody taught or coached her on what to testify at the investigation; and that she was not promised anything by way of reward or consideration or given money for testifying. Going further in his investigation, the Solicitor asked the Witness how she was treated by the respondent to find out If she harbors any ill-feeling or grudge against him and his alleged paramour, which could be a motive for falsely testifying against them, and she answered that she was well treated by the Toledos; that they considered" her a Bister; that they paid her regularly her salary of P15 a month; that they bought her a dress during the town fiesta on May 15; that Corazon never, scolded Her for she was a woman of few words, was kind and did not know how to get angry; and that the reason she left them was because she just felt lonesome for her parents. Further testing her credibility, the Solicitor asked how the respondent's paramour looked, and she described her as a woman of fair complexion. Comparing her (Corazon) to the complainant, she said that the complainant was more beautiful but Corazon was not ugly and that the latter had a nicer figure, because she was stouter and taller than the complainant. To find out if it was another and not the respondent who lived with Corazon, the Solicitor asked her if she had not seen Teodoro Nieva, who.lived with the

respondent and Corazon in the same house, kiss or embrace Corazon, and she replied that she had not.

Testing the credibility of Lino Domingo, the investigating Solicitor asked him whether he was related to Claudio Arellano, brother of the complainant, and Lino readily answered that he is his brother-in-law and added that he (Lino) is the cousin of the wife of Claudio. Asked if he had been asked by the complainant to testify at the hearing; he frankly answered in the affirmative. Questioned as to the description of the respondent's paramour, the witness stated that Corazon is fair in complexion, five feet tall; that she is taller and fairer in complexion, more beautiful and has a nicer figure than the complainant.

The testimony of these two witnesses' are worthy of credence. Marina Payot is a simple girl of eighteen years, a mere maid, scant in education, and understands little English. She did not even finish the sixth grade of the elementary course. The sharp and incisive questions propounded to her by the investigating Solicitor and the lengthy: cross-examination to which she was subjected by the respondent himself would have revealed herself if she was lying. The apparent inconsistencies in her answers may be attributed to her innocence and simple-mindedness and her failure to understand the questions propounded to her. Moreover, she could not be expected to remember the dates asked of her in the same way that a person of more than average intelligence would. Add to this the fact that she was subjected to a thorough examination by three lawyers and her confusion was compounded. Lino Domingo's frank and ready answers to the questions propounded by the Solicitor show sincerity and do not reveal any intention to pervert the truth. And even if his testimony be discarded, still the testimony of Marina Payot stands un rebutted.

The annexes attached to the respondent's memorandum cannot be taken into consideration for they were not properly introduced in evidence during the investigation.

The respondent, by abandoning his lawful wife and cohabiting with another woman who had borne him a child, has failed to maintain the highest degree of morality expected and required of a member of the bar.[6] Therefore, the respondent is disbarred from the practice of law.

Bautista Angelo, Labrador, Conception, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1]He took and passed the bar examination given by this Court in August 1949 (46 Off. Gaz. 4948, 4951) and was admitted to the practice of law on 16 May 1950 (47 Off. Gaz. 1221, 1226). [2] In a letter dated 17 July 1956 she informed the Court that the respondent is employed in the Bureau of Lands and not in the Bureau of Mines. [3]According to the respondent, he received notice of the order requiring him to answer the complaint on 18 September 1956.

[4]The complainant's letter dated 25 June 1956 was received in the docket section of this Court on 2 July 1956. It was returned to her because it was not duly sworn to before a person authorized to administer oath. On 9 July 1956 the complainant again filed in this Court the same letter duly sworn to before a notary public.

[5]Later on he transferred to the MLQ School of Law where he finished the law course.

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