

MEDELINA L. VIOJAN, COMPLAINANT, VS. RESTITUTO M. DURAN, RESPONDENT.

Adm. Case No. 248. February 26, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition filed by complainant Medelina L. Viojan against Restituto M. Duran, Justice of the Peace of Basey, Samar, for disbarment.

The records disclose that on January 27, 1955, complainant Viojan filed with the Department of Justice a complaint (Adm. Case No. 233) against respondent Duran as Justice of the Peace, charging him with having had carnal knowledge with her, by force. Acting on said complaint, the Undersecretary of Justice, on the same date, referred the matter to the District Judge of Samar, for immediate investigation, report, and recommendation. On February 12, 1955, the District Judge issued an order requiring respondent to answer said complaint. On February 21, respondent filed his answer denying all the allegations in the complaint imputing illegal and immoral acts to him. Thereafter, the case was heard and, on June 4, 1955, the District Judge submitted to the Secretary of Justice a report finding respondent guilty of immorality and recommending his suspension from the service for 3 months. Said report, in part, reads:

"We have by the weight of the evidence that the respondent (herein respondent Duran) did not rape the plaintiff (herein complainant Viojan). The sexual intercourse which the former had with the latter was with her consent.

"In the afternoon of September 20, 1954, the complainant and the respondent met for the first time at the wharf of Tacloban City, Where they boarded a motorboat which brought them to Marabut, Samar. They arrived at about ten o'clock in the evening after a trip of about five hours, and both lodged in the house of Mayor Ferreras.

"The following day, the complainant consulted the respondent about her land trouble which was the reason for her going to that place. The respondent sent for her adversary in the litigation. The respondent had the parties agree on a certain settlement before the ocular inspection of the land on September 24, 1954.

* * *

"That in the night of September 22, 1954, the complainant and the respondent indulged in caresses in the house of Andrea Genetea and in sexual intercourse in the house of Mayor Ferreras, cannot be doubted. Considering the evidence, to doubt them would be gracing the absurd. There is no motive for complainant to lie, at the expense of her honor and the reputation of her family, that the respondent had carnal intercourse with her. She and her husband are living together; and happily with their children before the husband came to know of her infidelity. That the respondent did not favor her by giving to her the better portion of the land, as alleged by the respondent to be the motive of this complaint, is a puerile, a whimsical excuse,

* * *

"The respondent has committed an act of immorality. The flesh is weak. But man should possess that

consciousness to do the right and avoid the wrong. And one who has taken the oath of public service to dispense with justice, should be more possessed of the courage and the will to overcome the weakness of the flesh. Since the dispensation of justice has to originate from sound moral consciousness, one who lacks it, or has shown to be wanting of it, cannot offer the guaranty required for the performance of a just dispensation. A magistrate has to live by the example of his precepts. He cannot judge the conduct of others when his own needs judgment. It should not be do as I say and not what I do.' For then the court over which he is called to preside will be a mockery, one devoid of respect. Hence, the necessity for the magistrate to possess enough fortitude to subdue his passion for wrong.

"There is, therefore, no question that for the immorality he committed within the territory of his jurisdiction as a Justice of the Peace, the respondent should be punished. But, considering the tempting circumstances which surrounded him for that length of time, which circumstances, were indirect invitations, his falling to sin should not be dealt with severity. Few men, and very few indeed, could have resisted that temptation; could have the moral strength, the spiritual energy to impose on his weaker self the will to ignore such enticement. Although we want to count the respondent among these few, yet it would be too much wishing to expect him to be among them before he learns the hard lesson brought about by repentance. This misstep, the first that he committed, should not be taken as the measure of his whole conduct. He should be given the chance after now to benefit himself out of his stumble. For after all, it was rightly said that 'without an element of the obscene, there can be no true and deep aesthetic or moral conception of life.'

"In view of the above considerations, it is recommended that the respondent be suspended as Justice of the Peace for a period of three (3) months."

In his 2nd Indorsement (dated October 12, 1955) to the President, the Secretary of Justice concurred in the above report of the District Judge, but recommended that respondent be suspended for a period of 6, instead of 3 months. Acting on said recommendation, the President issued Administrative Order No. 148, on November 26, 1955, suspending respondent from the office of Justice of the Peace of Basey, Samar, for a period of 6 months, without pay, to wit:

"Respondent denied having criminally attacked the complainant. But, it is obvious that he had illicit relation with her. I believe, however, that the cohabitation was effected by mutual consent. The complainant's testimony is too crude to be convincing.

"The offense committed by the respondent is adultery, the complainant being a married woman. Although it is of private nature, punishable as a felony only upon complaint of the aggrieved husband, who does not appear to have instituted any criminal action, it is obvious that the respondent is guilty of immorality.

"Wherefore, and upon the recommendation of the Secretary of Justice, Mr. Restituto M. Duran is hereby suspended from the office as justice of the peace of Basey, Samar, for a period of six months without pay, effective upon receipt of notice hereof."

Respondent filed a motion for reconsideration, but the same was denied by the President, on February 20, 1956. Complainants also filed a motion for reconsideration asking for an increase in the penalty imposed (she asked for respondent's removal from the service), but the same was, likewise, denied by the President, on recommendation of the Secretary of Justice.

During the time that said motions for reconsideration were pending with the President, or specifically on January 24, 1956, complainant filed with this Court the present petition for disbarment against respondent, on the basis of the same facts presented and established in the aforementioned Administrative Case No. 233. To this petition, respondent duly filed his answer on February 22, 1956, alleging as special defenses that the decision (in Adm. Case No. 233) relied upon by complainant is contrary to the evidence; and that assuming, arguendo, that the facts alleged in the petition are true, complainant has no personality to file the same, because she is herself a party to

the immorality referred to in the decision.

By resolution of this Court dated April 10, 1956, the case was referred to the Solicitor General for comment.

On April 24, the latter official submitted to us a return, recommending that respondent be merely suspended (not disbarred) from the practice of law, for such period of time as this Court may fix in its discretion, considering that respondent is "already punished with 6 months suspension from his office, without pay; that he is supporting 9 children; and that the sexual intercourse was made possible by the act of complainant herself, and that "to disbar the respondent would be disproportionate to the act committed under all the surrounding circumstances of the case". To this return, complainant filed an opposition on April 30, 1956.

On May 2, 1956, the Solicitor General filed a manifestation praying for the dismissal of the petition for disbarment against respondent, considering that he has already been suspended as Justice of the Peace, for a period of 6 months and has been authorized to resume his duties as such Justice of the Peace; that his suspension from the practice of law beyond those 6 months "would in effect lengthen further his suspension from the office of Justice of the Peace"; and "if the charges against respondent were not deemed sufficient to effect his dismissal from the service, they should not be strong enough to disbar him from the practice of law, or even extend the period of suspension beyond the period fixed by said Administrative Order No. 148".

It is not disputed that respondent had been found guilty of immorality (adultery) by the District Judge of Samar (in Adm. Case No. 233); that said finding had been affirmed by both the Secretary of Justice (in a 2nd Indorsement to the President dated Oct. 12, 1955) and the , President (in Adm. Order No. 148, dated Nov. 26, 1955); that in consequence thereof, the respondent was suspended from the service without pay, for six months; and respondent had undergone such suspension from November 4, 1955 to May 3, 1956. Complainant, however, submits that said punishment is too lenient and that respondent ought to be suspended from the practice of law for such period as may be fixed by this Court in its discretion. The Solicitor General, on the other hand, recommends dismissal of these proceedings but with a warning, on the ground that respondent has already been sufficiently punished.

Undoubtedly, respondent's immorality is condemnable. He is a Justice of the Peace and, as such, he is considered a high government official in the community of his assignment. Being in direct contact with the people thereof, he is expected to be above and beyond reproach, not only in his private, but also in his public or official conduct, dealings, and actuations. He ought to be a person of exemplary character, if not a model citizen—attributes so necessary if the citizenry are to keep faith in the proper and impartial administration of justice. By committing the immorality in question, respondent violated the trust reposed in his high office, and utterly failed to live up to the noble ideals and the strict standards of morality required of the law profession.

However, considering that respondent had already undergone the penalty of suspension from the office of Justice of the Peace without pay for 6 months, and to suspend him further in his capacity as a member of the Bar would, in effect, prolong his former suspension as a Justice of the Peace; and, furthermore, considering that the immorality committed by him was made possible partly by the rather equivocal conduct of complainant herself, we are constrained to agree to the Solicitor General's recommendation and hereby dismiss the present disbarment proceedings against respondent, with a warning that a repetition of a similar offense by him would be dealt with more severely by this Court. So ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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