

**MARILES I. VILLANUEVA, COMPLAINANT, VS. ATTY. RODOLFO B. POLLENTES, BRANCH CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH 26, ILOILO CITY, RESPONDENT.**

*OCA I.P.I. No. 95-12-P. August 03, 1995*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

This relates to an administrative complaint filed by Mariles I. Villanueva against respondent Atty. Rodolfo B. Pollentes, Branch Clerk of Court of the RTC (Br. 26) of Iloilo City, for delay in the transmittal of the record of a criminal case to the Court of Appeals.

It appears that on April 4, 1994, the trial court rendered a decision in Criminal Case No. 40066, finding accused William Rizalde, Sr., guilty of homicide for the killing of complainant's husband. The accused filed a notice of appeal.

Sometime in August 1994, complainant inquired from respondent about the status of the appeal. She was informed that due to the incompleteness of the record, it could not be immediately transmitted to the Court of Appeals. The record was not elevated to the appellate court until December 2, 1994. On September 23, 1994, complainant filed this case against the clerk of court.

In his comment, respondent claims that the "policy of the Office of the Clerk of Court of RTC, Iloilo City [is] not to accept the records of the case without the TSN's." He claims that because of the absence of the two stenographers, Veronica N. Alvarez and Ma. Chenita S. Alegroso, who took notes of the proceedings, the notes could not be transcribed much earlier. Attached to his comment are the affidavits of the two stenographers. Stenographer Veronica N. Alvarez, states:

That on August 20, 1994, my husband-lawyer met a vehicular accident at Bago City, Negros Occidental and he was confined in the Intensive Care Unit of the Riverside Hospital, Bacolod City from the day he was admitted until he expired, or for a period of more than three (3) weeks;

That during such period of confinement of my husband in the ICU, I was literally indisposed in the office as I was financially, emotionally, physical and psychologically pre-occupied in attending to my husband's needs making sure that he gets the medical and surgical attention he deserves, although in the end he died and was buried on September 18, 1994;

That likewise, during his wake and interment, undersigned affiiant had also to be physically present in Negros Occidental, where his body was laid to rest;

That on such dates, these transcripts were already transcribed but the copies were lacking, thus the need for the retyping of the additional copies thereof;

On the other hand, stenographer Ma. Chenita S. Alegroso, states:

That sometime on September 7, 1994, I went to see a doctor to have a medical check-up of my illness; and I was advised by my attending physician to stay at home to have my illness treated. Attached herewith is my medical certificate marked as Annex "A" of this Affidavit;

On the second week of October, 1994 I suffered from sore eyes and at the same time I was attacked of my on and off epigastric pain which caused me to be absent from the office for a period of One (1) week. However, then on and off attack of my epigastric pain had caused me weakness and nausea. Despite of that, I still forced myself to report to the office;

That I had already transcribed all my stenographic notes for the aforesaid case, however, due to the number of copies required to be submitted to the Court of Appeals, I have to re-type my stenographic notes for the entire proceedings which I submitted on November 15, 1994;

The Office of the Court Administrator, to which this matter was referred, found respondent to be guilty of "some degree of negligence" in failing to transmit the record of the case on time.

We agree with this finding. Pursuant to the Rules of Court, respondent's duty, as Branch Clerk of Court, was to deliver the complete record of the case to the Clerk of Court so that it could be transmitted to the appellate court within five days after the accused gave notice of his appeal. (Rule 122, §8) This duty could not be excused simply because copies of the stenographic notes had not been made by the stenographers. What is required to be transmitted within five (5) days from the filing of a notice of appeal is the complete record, not the TSN. If the TSN cannot be transmitted at the same time as the record, it could be submitted to the appellate court later.

Indeed, it appears that the record was already complete. Even the original of the TSN was already finished and all that was needed was to make additional copies. The respondent could have delivered the complete record and the original TSN to the Clerk of Court for eventual transmission to the Court of Appeals within five (5) days from the filing of notice of appeal in April 1994, as required by Rule 122, §8 which provides:

Sec. 8. Transmission of papers to appellate court upon appeal. - Upon an appeal being taken, the clerk or judge of the court with whom the notice of appeal shall have been filed, must, within five (5) days after the filing of the notice, transmit to the clerk of the court to which the appeal is taken, the complete record in the case together with the notice of the appeal. The original and three copies of the transcript of the stenographic notes shall also be transmitted to the clerk of the appellate court together with the record, or as soon as thereafter possible. The other copy or the transcript shall remain in the lower court.

Strict compliance with the duty to transmit the record of cases within five (5) days from the filing of a notice of appeal was especially required because the case is a criminal case. The claim that respondent was simply following a policy laid down by the Office of the Clerk is untenable not only because no circular to that effect has been cited and even if there was such a circular, it could not prevail over the specific requirement of the Rules of Court.

WHEREFORE, a FINE of two thousand pesos (P2,000.00) is IMPOSED upon Atty. Rodolfo B. Pollentes, with WARNING that a similar infraction will be dealt with more severely.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Regalado, Puno, and Francisco, JJ., concur.

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