

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ROSCOE DABAN Y GANZON, DEFENDANT AND APPELLANT. SIXTO P.
DEMAISIP, RESPONDENT.**

G.R. No. L-31429. January 31, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

There is need anew in this disciplinary proceeding to lay stress on the fundamental postulate that membership in the bar carries with it a responsibility to live up to its exacting standard. The law is a profession, not a trade or a craft. Those enrolled in its ranks are called upon to aid in the performance of one of the basic purposes of the State, the administration of justice. To avoid any frustration thereof, especially in the case of an indigent defendant, a lawyer may be required to act as counsel de officio. The fact that his services are rendered without remuneration should not occasion a diminution in his zeal. Rather the contrary. This is not, of course, to ignore that other pressing matters do compete for his attention. After all, he has his practice to attend to. That circumstance possesses a high degree of relevance since a lawyer has to live; certainly he cannot afford either to neglect his paying cases. Nonetheless, what is incumbent upon him as counsel de officio must be fulfilled. If for any reason, he fails to do so – a matter which may be susceptible of explanation but not of justification – he should know that he is to be held accountable. He is entitled to be heard in his defense, it goes without saying. Where he is unable to do so, because what is alleged by him to ward off disciplinary action is bereft of support in law, he certainly cannot expect to be let off lightly. That is the fate in store for respondent Sixto P. Demaisip, counsel de officio of appellant Roscoe Daban.

The facts are undisputed. Respondent, Attorney Sixto P. Demaisip, started as counsel de parte of appellant. On October 24, 1970, he filed a motion for extension of time of 30 days within which to file appellant's brief. It was granted. So were subsequent motions for extension respectively filed on November 11, 1970 for 25 days, December 12, 1970 for 20 days, January 4, 1971 for 18 days, January 14, 1971 for 15 days, January 28, 1971 for 15 days, February 12, 1971 for 12 days, February 27, 1971 for 10 days, March 6, 1971 for 15 days, April 12, 1971 for 15 days, April 20, 1971 for 13 days, May 3, 1971 for 10 days, and May 14, 1971 for 15 days. Then, on May 25, 1971, after having obtained 13 extensions in all, he filed a motion asking that in view of the father of appellant being unable to raise money for printing expenses, he be allowed to retire as counsel de parte and be appointed as counsel de officio instead to enable him to file a typewritten brief, a draft of which, according to him, he had by then finished. This Court, in a resolution of June 2, 1971, granted his prayer to be appointed counsel de officio, but required him to file a mimeographed rather than a type-written brief. In the light of his own representation, there was reason to expect that such a brief would be duly forthcoming. It did not turn out to be the case at all, for respondent Demaisip, this time as counsel de officio, kept on filing motions for postponement, four in number, likewise granted by this Tribunal in a spirit of generosity. All in all, he had seventeen extensions. Still there was no appellant's brief.

It was only then that on October 11, 1971 this Court issued a resolution, reading as follows: "For failure to submit

accused-appellant Roscoe Daban y Ganzon's brief within the extended period which expired on August 24, 1971, Atty. Sixto P. Demaisip is hereby required to explain, within ten (10) days from notice hereof, why disciplinary action should not be taken against him." What passed for an explanation for appellant's persistent failure to file appellant's brief was submitted on November 25, 1971, worded thus: "[Comes now] the accused-appellant, by and thru the undersigned counsel de oficio, unto this Honorable Supreme Court most respectfully manifests and explains that, in the opinion of the undersigned lawyer, grounded on settled jurisprudence, the escape of the prisoner automatically makes the appeal useless and unnecessary because it is considered abandoned." It is his prayer, therefore, that the above be considered a satisfactory explanation.

Respondent Demaisip ought to have known better. His explanation disregards the facts and betrays ignorance of the law. It is true there was a notice on June 23, 1971 from the then Acting Director Vicente R. Raval of the Bureau of Prisons that on June 15 of that year appellant Roscoe Daban y Ganzon did escape. As far back as May 13, 1971, however, respondent Demaisip, according to his motion of that date filed on May 25, 1971, wherein he prayed that he be appointed counsel de oficio and permitted to submit a mimeographed brief, had assured this Court that he had already prepared a draft. If he were not careless of the truth, then there was no excuse why prior to June 15, 1971 he was unable to submit such a brief to this Court. It is not to be ignored either that as of that date he had already secured thirteen extensions, ordinarily many more than any counsel is entitled to but nonetheless granted him, because the sentence imposed was one of death.

Now, as to the law. It would appear that respondent Demaisip is unaware of Section 9 of Rule 122. Thus: "The records of all cases in which the death penalty shall have been imposed by any Court of First Instance, whether the defendant shall have appealed or not, shall be forwarded to the Supreme Court for review and judgment as law and justice shall dictate. The records of such cases shall be forwarded to the clerk of the Supreme Court within twenty (20) days, but not earlier than fifteen (15) days, after rendition or promulgation of the sentence in the form prescribed by section 11 of Rule 41. The transcript shall also be forwarded as provided in section 12 of Rule 41 within five (5) days after the filing thereof by the stenographer." The penalty imposed on appellant Daban y Ganzon in the judgment of November 21, 1969 being one of death, the case was properly elevated to this Court. Moreover, until after this Court has spoken, no finality could be attached to the lower court decision. As explained in former Chief Justice Moran's Comments on the Rules of Court:[1] "In this connection, it must be emphasized that the judgment of conviction imposing the death penalty entered in the trial court, is not final, and cannot be executed and is wholly without force or effect until the case has been passed upon by the Supreme Court en consulta; that although a judgment of conviction is entered by the trial court, said decision has none of the attributes of a final judgment and sentence; and that until it has been reviewed by the Supreme Court which finally passes upon it, the same is not final and conclusive; and this automatic review by the Supreme Court is something which neither the court nor the accused could waive or evade." [2] The mere fact of escape of appellant, therefore, could not be relied upon by respondent Demaisip as sufficient cause for his failure to file appellant's brief.

Nothing can be clearer, therefore, than that respondent Demaisip, by such gross neglect of duty, notwithstanding the many extensions granted him, was recreant to the trust reposed in him as counsel de oficio. The language of former Justice Sanchez in a recent decision[3] fits the situation: "It is true that he is a court-appointed counsel. But we do say that as such counsel de oficio, he has as high a duty to the accused as one employed and paid by defendant himself. Because, as in the case of the latter, he must exercise his best efforts and professional ability in behalf of the person assigned to his care. His is to render effective assistance. The accused defendant expects of him due diligence, not mere perfunctory representation. We do not accept the paradox that responsibility is less where the defended party is poor. * * * For, indeed, a lawyer who is a vanguard in the bastion of justice is expected to have a bigger dose of social conscience and a little less of self-interest. Because of this, a lawyer

should remain ever conscious of his duties to the indigent he defends." [4]

Such a doctrine is of venerable vintage. As far back as 1905, this Court did have occasion to admonish counsel de oficio for failure to take the appropriate steps in defense of an indigent client. Thus: "An examination of the record in the case of the United States vs. Julian Tulagan et al. shows that the appellants were sentenced in the trial court to long terms of imprisonment for the crime of robo en cuadrilla, from which sentence they appealed, and it appearing that they were too poor to employ a lawyer, this court, in accordance with the law provided in such cases, assigned the said Lahesa as counsel de oficio, yet the said Lahesa has utterly failed to take any action whatever in behalf of the defendants in said case, though more than a year has elapsed since the date of said assignment. An examination of the record in the case of the United States vs. Julio Liuag shows that the defendant was sentenced to seventeen years and four months' imprisonment for the crime of homicide, from which sentence he appealed, and it appearing that he was too poor to employ a lawyer, this court assigned the said Lahesa as counsel de oficio, yet the said Lahesa has utterly failed to take any action whatever on behalf of the defendant in that case, though more than six months have elapsed since the date of his assignment." [5]

The liability incurred by respondent Demaisip is thus unavoidable. He had failed to fulfill his responsibility as defense counsel. Whether as counsel de parte or as counsel de oficio, he was indeed truly remiss in the discharge of a responsibility which, as a member of the Bar, he cannot evade. It is by such notorious conduct of neglect and indifference on the part of counsel that a court's docket becomes unnecessarily clogged. His transgression is undisputable; what remains is the imposition of an appropriate penalty.

WHEREFORE, until further orders of this Court, respondent Sixto P. Demaisip is hereby suspended from the practice of the law in all courts of the Philippines, except for the sole purpose of filing the brief for appellant Roscoe Deban y Ganson with this Court within a period of twenty days from receipt of this resolution. Let a copy of this resolution be spread upon his record. The Court of Appeals is furnished a copy of this resolution for its information. The Department of Justice is likewise furnished a copy thereof for transmission to the courts of first instance and the inferior courts for their information and guidance. This resolution is immediately executory.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Zaldivar, J., did not take part.

[1] 4 Moran, Comments on the Rules of Court, 1970 ed.

[2] Ibid, pp. 367-368.

[3] In the Matter of Atty. Lope E. Adriano, People vs. Estebia, L-26868, Feb. 27, 1969, 27 SCRA 106. Cf. In the Matter of Atty. Filoteo Dianala Jo, Jan. 28, 1961, 1 SCRA 31; People vs. Aguilar, L-20147, Feb. 28, 1963, 7 SCRA 468; People vs. Tan, L-22697, Nov. 2, 1965, 15 SCRA 252; In the Matter of Atty. Crisostomo F. Parinas, People vs. Pascual, L-27569, July 28, 1969, 28 SCRA 822; Re: Hospicio O. Zapata, People vs. Cawili, L-30543, Aug. 31, 1970, 34 SCRA 728.

[4] Ibid, pp. 109-110.

[5] In the Matter of Jose Robles Lahesa, 4 Phil. 298, 299-300 (1905).

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