

GAUDENCIO R. MABUTOL, COMPLAINANT, VS. MANUEL R. MAZA, RESPONDENT.

Adm. Case No. 1541. July 20, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

The charges against respondent and his answer thereto are stated in the report and recommendation of the Solicitor General, copy of which is hereto attached and made integral part hereof by reference. These cases were referred to the Solicitor General for the corresponding investigation, report and recommendation after the Court denied the motion of respondent for dismissal on the ground that he had already been exonerated on the same charges by the Minister of Justice and the President. After carefully going over the record of the investigation conducted by the Provincial Fiscal of Nueva Ecija, and the report and recommendation of the Solicitor General based thereon, We find and hold that on the basis of the facts and considerations stated in said report, the complaint herein should be as it is hereby DISMISSED.

SO ORDERED.

Aquino, Conception Jr., Abad Santos and De Castro, JJ., concur.

REPORT AND RECOMMENDATION

COME NOW the undersigned, and in compliance with the resolutions, both dated July 21, 1976, requiring investigation, report and recommendation on these cases, to this Honorable Court respectfully submit this report.

The Case.

The cases were referred to the Provincial Fiscal for investigation, who conducted a joint hearing in both cases. Several hearings, with notices to the parties, were set by the Provincial Fiscal to give them opportunity to present their evidence, but in spite of repeated warnings only respondent City Fiscal appeared. Complainants in both cases did not present their evidence, so that respondent City Fiscal on October 19, 1978, when the cases were set for hearing for the last time, moved for the termination of the investigation and the dismissal of the complaints on the ground that the facts, and issues at bar are the same as those invoked in the administrative case filed by herein complainants against him with the then Department of Justice (now Ministry of Justice) for his removal as City Fiscal of San Jose City, which was dismissed by the Office of the President upon recommendation of the Secretary of Justice (Recommendation of Honorable C. Perez, Sr., Provincial Fiscal dated June 1, 1979).

The Investigating Fiscal recommends the dismissal of both cases herein (Recommendation, Ibid).

The Charges

Gaudencio R. Mabutol in Administrative Case No. 1541, seeks the disbarment of incumbent City Fiscal Manuel R. Maza on the ground of gross malpractice, grave abuse of authority, grave misconduct and gross ignorance of

the law, based on the following:

- (a) Fiscal Maza allowed himself to be the tool of Mayor Arturo B. Pascual by giving due course to four (4) unfounded libel charges, a false testimony charge and a fabricated charge for rumor mongering under PD No. 90, filed by said Mayor against him (Mabutol);
- (b) Fiscal Maza gave due course to the charge of unjust vexation against him (Mabutol) without giving him his day in court;
- (c) Fiscal Maza charged, without basis, Rosalinda Mabutol, his (Mabutol's) wife, before the City Court of San Jose City, for violation of City Ordinance No. 307, for conducting the drug store business without a Mayor's Permit (pp. 2, 232, 289, Rec. Adm. Case No. 1541);
- (d) Fiscal Maza charged and prosecuted him (Mabutol) for constructing a fence and repairing a warehouse without a building permit although a mandamus case on the matter was then pending before the Court of First Instance of Nueva Ecija and even after it was decided in his (Mabutol's) favor;
- (e) Fiscal Maza purposely split two different causes of action to harass and oppress him (Mabutol) by charging him for assault of an agent of a person in authority and for robbery when said cases allegedly arose from one and the same act;
- (f) Fiscal Maza has acted as counsel adviser of Mayor Arturo B. Pascual in both official and private cases in harassing and oppressing him (Mabutol) and his family;
- (g) Fiscal Maza on September 18, 1975, threatened him (Mabutol) with the filing of more cases of harassment against him if he would not withdraw the charges of anti-graft and backsliding he filed against Mayor Pascual with the Department of National Defense and Department of Local Government and Community Development.

In Administrative Case No. 1544, Dr. Ben V. Reyes and Federico Delizo, Jr. seek respondent's disbarment because as City Fiscal he falsely charged them for abortion on a baseless complaint of Lorida Duran before the Court of First Instance of Nueva Ecija, Branch VI, ignoring their plea for a chance to appeal to the Department of Justice; and he tried to secure their immediate arrest, and they would have been arrested were it not for the timely intervention of the Chief State Prosecutor and the Court of First Instance.

Dr. Reyes and Mr. Delizo, Jr. likewise charged respondent for stating in his resolution finding probable cause, in the said case, that Federico Delizo, Jr. should not be believed in professing under oath, that he is a law-abiding citizen, because the records of the Fiscal's Office shows that Delizo, Jr. was previously charged with five (5) offenses.

Fiscal Maza is likewise charged for making it appear that Dr. Ben Reyes lied when he stated that he had not yet found the drug syntocinon that is effective for abortion, in his medical practice.

The Answer

Respondent Fiscal Maza, in his answer filed in Administrative Case No. 1541 alleged:

- (a) That the four (4) libel cases he gave due course against Mabutol, but which were not filed before the Court because the Secretary of Justice overruled him, are supported by the evidence, in that the charges of the Mayor were admitted in Mabutol's controverting affidavit. And this charge of false testimony filed by the Mayor against Mabutol is still pending in the Fiscal's Office due to a writ of prohibition and the present disbarment proceedings.
- (b) That it is not true that he charged Mabutol with unjust vexation without giving him his day in court,

because Mabutol was duly notified as in fact Mabutol submitted controverting affidavits, and he (respondent Maza) even sought clearance from the Department of Justice before filing the said charge but he was informed that a clearance is no longer required.

(c) That he charged Mabutol's wife, Rosalinda Mabutol, for engaging in the pharmacy business, without permit, because she insisted in engaging in the pharmacy business without the required permit and that a permit could not be given her for that business on account of the fact that her pharmacy store was situated in a building illegally constructed in violation of LOI No. 19 and PD No. 296.

(d) That he charged Mabutol with constructing a fence and doing repair work on a warehouse without a building permit, and inspite of the pendency of a Mandamus case on the matter, because the criminal case for constructing without permit was filed on September 17, 1974, and the mandamus case was filed on October 1, 1974.

(e) The charge that he purposely split two different causes of action, one for robbery and the other for assault of an agent of a person in authority, to harass and oppress Mabutol, is unfounded because the attendant facts and circumstances of the case requires separating the two offenses.

(f) That although Mayor Pascual had his own private lawyers, Attys. Ponciano Mortera and Dakila Castro, he had acted as counsel and adviser of Mayor Pascual, not to oppress and harass Mabutol, but pursuant to law in the performance of his official duties as fiscal.

(g) That the charge that he threatened Mabutol with filing more cases of harassment if Mabutol would not withdraw his charges of anti-graft and backsliding he filed against Mayor Pascual before the then Department of National Defense and Department of Local Government and Community Development, is "absolute falsehood and a malicious and nefarious fabrication."

In addition, Fiscal Maza claims that he had never received personal favor from Mabutol, as in fact he has kept aloof from public functions, except as President of San Jose City High School Parent-Teacher Association, President of the Administrative Board of the San Jose City United Methodist Church, and Vice President of the Nueva Ecija II Electric Cooperative Inc.; that Mabutol has been motivated to initiate these charges because he rendered opinion to the Mayor leading to the order for demolition of Mabuto's three storey, three-door apartment-commercial building, that encroached on a creek.

As to Administrative Case No. 1544, Fiscal Maza in his answer, alleged that he found probable cause in the charge of abortion against Dr. Ben V. Reyes and Federico Delizo, Jr. because the sworn statement of Lorida Duran, the girl who aborted, shows, among others, that Federico Delizo, Jr. her boy friend, brought her to Dr. Reyes who injected her with "Syntocinon" and took "Hermotone T" upon his prescription, after which she bled and had abortion; that unfortunately Lorida Duran later turned hostile by executing another affidavit conflicting with the first in which she stated that her charge is a fabrication, thus constraining him to move for the dismissal of the case; that Dr. Ben Reyes is the brother-in-law of Mabutol and this disbarment charge against him was instituted to help Mabutol (pp. 35-36, rec. Case 1544).

DISCUSSION

- The Complaint of
Mabutol Case
No. 1541.

Complainant Gaudencio Mabutol (Adm. Case No. 1541) would want to disbar respondent for Malpractice, Grave

Abuse of Authority, Grave Misconduct and Gross Ignorance of the Law, for having allegedly committed the following acts, which, however, as shown by the evidence discussed herein have not been proven to be well-founded, viz.:

CHARGE ONE

That RESPONDENT, as City Fiscal, allowed his office and position as tool of the City Mayor to oppress, harass and abuse complainant and his family for having given due course to four complaints for Libel, one for Unlawful Rumor Mongering and one for False Testimony, which are baseless and unfounded, and for refusing to dismiss the libel cases inspite of a directive from the Department of Justice.

As to this charge, the parties admitted the following facts:

- (1) On 17 September 1974, the City Mayor, through the Chief of Police, has filed a complaint for libel, four counts, and Unlawful Rumor Mongering with the Fiscal's Office against Mabutol (Annex B, Complainant, Case No. 1541);
- (2) On 30 September 1974, Gaudencio Mabutol submitted his counter affidavit pursuant to Pres. Decree No. 77 (Annex 1, Answer, Case No. 1541);
- (3) On 22 November 1974, RESPONDENT after the preliminary investigation, issued a resolution finding the existence of a probable cause for the offenses for which Mabutol was charged and investigated (Annex 22, Answer, Case No. 1541);
- (4) On 24 January 1975, the Honorable Secretary of Justice wrote the City Fiscal directing him to dismiss the libel cases against Mabutol on the ground that the libelous statements/acts are absolute privilege (Annex 4, Answer, Case No. 1541), and the directive was duly complied with on the date it was received on 30 January 1975 as seen at the bottom of the directive where the City Fiscal wrote: DONE AS DIRECTED, (see bottom, page 2 of Annex 4).

From the above facts, Gaudencio Mabutol would want to show that the acts of respondent in giving due course to the complaint (Annex B) and for not dismissing the complaint inspite of a directive from the Department of Justice, constituted grounds for disbarment. Giving due course to a complaint filed with the Fiscal's Office is the docketing of a complaint filed in due form, that is, that it is in writing and under oath, and, immediately thereafter, the investigation of the case as outlined by the provisions of Pres. Decree No. 77 (now amended by Pres. Decree No. 911) to determine the existence of a probable cause. Giving due course to a complaint may also mean the sending of subpoena to respondent, together with copies of the sworn statements of the complainant and his witnesses and to ask the respondent and his witnesses clarificatory questions and, thereafter, to render a Resolution dismissing the case or finding the existence of a probable cause. Thus, Section 1 of PD No. 77 provides that:

"SECTION 1. Notwithstanding any provision of law to the contrary and except when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or any of his assistants, or by the Chief State Prosecutor or his assistants, without first conducting a preliminary investigation in the following manner:

"a. All complaints shall be accompanied by statements of the complainant and his witnesses as well as other documents. The statements of the complainant and his witnesses shall be sworn to before the investigating fiscal or state prosecutor. He shall examine them and satisfy himself that their statements were voluntarily executed and understood by them.

"b.' If on the basis of the complainant's sworn statements and documents submitted there does not appear to be

a prima facie case, the investigating fiscal or state prosecutor shall dismiss the case; if a prima facie case is established by complainant's evidence, he shall notify the respondent by issuing a subpoena requiring him to submit at an indicated date which shall not be more than ten (10) days from receipt of the subpoena, counter affidavits and other supporting documents. To the subpoena shall be attached a copy of the complaint, the sworn statements and other documents submitted. Other evidence submitted shall be made available for examination of the respondent or his counsel. The statements of the respondent and his witnesses shall be sworn to before the investigating fiscal.

"c. Whenever necessary, the fiscal or state prosecutor may subpoena either or both parties or their witnesses and propound clarificatory question, during which both complainant and respondent shall be afforded an opportunity to be present but without right to examine or cross-examine."

Clearly, in the preliminary investigation of the Libel and Unlawful Rumor Mongering cases the due process requirement of Presidential Decree No. 77, now amended by Presidential Decree No. 911, had been complied with and, therefore, the charge that respondent gave due course to baseless and unfounded charges is without legal and factual basis.

To this extent the record shows that there was a valid complaint filed, accompanied by the sworn statement of the complainant with annexes (Annex B, Complaint in Case No. 1541), a controverting affidavit was submitted by the respondent therein (Annex 1, Answer in Case No. 1541), and, thereafter, respondent, as investigating fiscal, resolved the cases finding Gaudencio Mabutol probably guilty of the offense charged (Annex 2, Answer in Case No. 1541).

The submission of a controverting affidavit had conclusively shown that respondent therein was duly notified and given the opportunity to defend himself. The resolution of the cases on 22 November 1974, almost two months after Gaudencio Mabutol submitted his counteraffidavit on 30 September 1974 also had shown that the cases, after preliminary investigation, were submitted for resolution. Consequently, in so far as this charge is concerned, herein complainant has not been deprived of "his day in court".

Going into the merits of the Letter Complaint under Oath for Libel and Rumor Mongering (Annex B) to determine whether the conclusion of herein respondent that herein complainant is probably guilty thereof, it is noted that the facts of the cases, as narrated by complainant City Mayor, were admitted by complainant Gaudencio Mabutol. Thus, in his counteraffidavit, (Annex 1, Case No. 1541), he stated that for the same causes under similar sets of facts, he instituted administrative complaints with League of Governors and City Mayors, with the Military Authorities, with the Office of the President at Malacañang Palace, and civil cases with civil courts; that he sent copies "of our complaints to different branches of our government," (Par. 5, Annex 1).

The City Mayor in his complaint did not charge Gaudencio Mabutol for employing libelous or defamatory language in official or judicial pleadings alone, but the City Mayor considered as libelous and rumor mongering the following acts of Mabutol: (a) the use of defamatory language in pleadings; (b) the complete want of relevance, pertinence and materiality of defamatory, angry and arrogant language to the subject matter of the inquiry; (c) the filing of the same causes of action with different government offices which have no jurisdiction; and (d) the sending of copies of the administrative complaints to different government officials who have nothing to do with the investigation of those cases. Wherefore, the herein respondent, in finding the existence of probable cause as to said complaint of the mayor against Gaudencio Mabutol ruled that:

"As quoted by the complainant in his sworn statement, Exhibit 'A1, from pages 3 to 6, respondent Mabutol, and the other respondent, Nemesio Agonoy, have, in their pleadings, used unnecessary and impertinent language which are harsh, barbaric and uncalled for. Such Language are no longer descriptive of the acts complained of but are excessively used with no other legitimate purpose but to malign. Coupled with the fact

that there was no good motive for the publications and distribution of the said libelous act, it could be presumed that there was in fact and in law a malice in the defamatory imputations. (Page 12 of Annex 2, Resolution of the Libel Cases, Case No. 1541).

The above ruling of herein respondent finds support in the case of Tolentino vs. Baylosis, 1 SCRA 296, where this Honorable Court ruled that:

"Counsel, parties, or witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings, provided that the statements are connected with, or relevant, pertinent or material to the cause in hand or subject of inquiry.

...

"The pleadings should contain only the plain and concise statements of the material facts and not the evidence by which they are to be proven. If the pleader goes beyond the requirements of the statute and allege an irrelevant matter, which is libelous, he loses his privilege.

...

"Reason for requirement of relevancy.— Without the requirement of relevancy, pleadings could be easily diverted from their original aim to succinctly inform the court into a vehicle for airing charges motivated by personal rancor."

In other words, statements published in the course of judicial proceedings are privileged only if pertinent, relevant or material to the subject of inquiry. This may not be the view of the Honorable Secretary of Justice when he ruled "that all kinds of pleadings, petitions and motions made in the course of judicial proceedings belong to the class of communications that are absolutely privileged" (Annex 3 of Answer, also Annex C of Complaint, Case No. 1541), citing the case of Sison vs. David, 1 SCRA 60, yet the ruling does not make the conclusion of herein respondent finding Mabutol probably guilty of the offense charged as "baseless and unfounded". The Honorable Secretary did not rule that the Fiscal's resolution is without basis in fact; neither did he rule that the findings of facts are wrong, or that the finding of the City Fiscal, is wanting in factual basis.

The difference of opinion concerns a question of law: the Honorable Secretary as above-stated, ruled that the defamatory statements are absolutely privileged; herein respondent has, on the other hand, ruled that the privilege had been lost. At any rate, herein respondent, on receipt of the directive of the Secretary of Justice on 30 January 1975 (Annex 3 of Answer; Annex C of Complaint, Case No. 1541), immediately complied by writing at the bottom thereof the phrase: DONE AS DIRECTED, meaning dismissed. The libel cases, since then, were considered closed and terminated.

The case for Spreading False Information and Rumor Mongering is embodied in the same sworn statement of the City Mayor which indicted Mabutol for Libel. When, therefore, the Honorable Secretary of Justice ruled that the defamatory statements are absolutely privileged and directed the City Fiscal to dismiss the complaint, he likewise dismissed the case for Rumor Mongering (p. 112, rec, Case No. 1544).

Included in this CHARGE ONE is the complaint for False Testimony which Mabutol also declared as having been given due course although wanting of basis in fact or in law. The investigation of this case was held in abeyance pending the finality of the judgment of conviction in the case where Mabutol purportedly made the false testimony (People vs. Maneja, 72 Phil. 256; Annex 44, attached to Respondent's Memorandum, suspending investigation). Prior to the issuance of said resolution, Gaudencio Mabutol filed a petition for prohibition with preliminary injunction against the City Fiscal and his Assistant (Annex 4, Answer in Case No. 1541), praying that respondent be inhibited from investigating the case for False Testimony. The Court, however, dismissed the

petition for want of a cause of action and for having become moot and academic (Annex 5, id.). by reason of the voluntary self inhibition of the City Fiscal and his Assistant (Annexes 6 and 7, Id.).

However, on 11 July 1974, the Chief State Prosecutor denied the City Fiscal's inhibiting himself and his request for designation of an Acting Fiscal to conduct the preliminary investigation (Annex 31, Id.). But before the respondent could resume action on the case, Mabutol once more filed a petition for a writ of prohibition with preliminary injunction with the Court of First Instance of Nueva Ecija, against the City Judge and the City Fiscal and his Assistant, praying that said officials be enjoined from trying or investigating any and all cases that had been filed or might be filed against him (Gaudencio Mabutol) (Annex 8, id.). The petition for issuance of a writ of preliminary injunction, however, was denied (Annex 9, id.).

In the petition for prohibition, the charge of harassment, oppression and abuse pleaded therein are the same charges aired and repeated in the present case for disbarment. The trial court ruled that there was no oppression, abuse and harassment on the part of respondent, as appears in a pertinent portion of its decision, viz.'

"At a quick glance the above-mentioned multiple charges or complaints filed against herein petitioner and some members of the family seemingly appear to be formidable, awesome, harassing and persecutory as shown by the sequence and dates of filing, the quantity and nature of the complaints. Thus, one complaint for the violation of Municipal Ordinance No. 56, Series of 1970 (re: building permit) was filed against petitioner on September 16, 1974 with the Police Station No. 1, of San Jose City. Two (2) days later or on September 18, 1974 four (4) complaints for libel were filed on the same date with the same City Fiscal's Office, San Jose City. On January 9, 1975, four (4) cases of unjust vexation were all filed with the same City Fiscal's Office, on the same date, three (3) against petitioner Mabutol, and one (1) against his son Roberto Mabutol. On March 19, 1975, a case for violation of the local tax code was filed with the San Jose City Police against petitioner's wife, Rosalinda Mabutol. On April 1, 1975, the case for false testimony was filed with the same City Fiscal's Office against petitioner Mabutol, and on May 5, 1975, a complaint for robbery was filed with the same Police Department of San Jose City against petitioner Mabutol. A careful study, however, would show that most of the complaints are for minor offenses except that of robbery, hence, the mere filing of the said complaints does not necessarily and conclusively show that there exists harassment and persecution against the petitioner, There must be more and substantial and competent evidence to show clearly and convincingly such intention which requires the reception of such evidence in the trial upon the merits as the Court may deem proper."

...

"Under the law, the right is vested in every citizen or person to file such action, civil or criminal or administrative, or any such remedies, which he believes will best protect his rights or to redress any wrong committed against him or in violation of such rights. When such an action is filed, it is the clear duty of the proper authorities, Fiscal, court, or office, to proceed to try, determine and decide such cases, under the rule prescribed for the purpose, in accordance with the law. That precisely is what is being done in the cases subject matter of this action." (pp. 10-13, Annex 9 of Answer, Case No. 1541, the Order denying the issuance of a writ of preliminary injunction).

CHARGE TWO

FOR FILING THREE INFORMATIONS IN COURT FOR INJUST VEXATION WITHOUT GIVING COMPLAINANT AND HIS SON, ROBERTO MABUTOL, THEIR DAY IN THE PRELIMINARY INVESTIGATION AMOUNTING TO A DEPRIVATION OF DUE PROCESS OF LAW. (PAR. (4), COMPLAINT).

Complainant contends that the three complaints for Unjust Vexation were instituted against him to harass "but were given due course without giving the respondents their day in the preliminary investigation which is

tantamount to the deprivation of due process of law." Consequently, respondent herein is now charged with grave abuse of discretion.

The uncontroverted facts show that a subpoena in the said cases was issued on 15 February 1975, requiring Gaudencio Mabutol and his son, Roberto, to appear before the City Fiscal on 25 February 1975, at 2:00 o'clock in the afternoon, which was received by Gaudencio Mabutol on 20 February 1975 at 5:25 in the afternoon (Annex 10, Answer in Case No. 1541, true copy of subpoena); that on 5 March 1975, Gaudencio Mabutol and Roberto Mabutol submitted their respective counter-affidavits (Annexes 11 and 12, id.); that Gaudencio Mabutol, was appointed a ward leader, for which reason he sought clearance from the Department of Justice pursuant to Letter of Instruction No. 180 (Annex 13, Indorsement to the Honorable Secretary of Justice), but the Department, in its 2nd Indorsement of 16 January 1975, returned the records without the clearance for the reason that Gaudencio Mabutol is not a local elective official (Annex 14, id.).

In view of the foregoing opportunities given him, how could due process have been denied Gaudencio Mabutol as he was duly notified? In fact he filed his counter-affidavit, and only after clearance was first sought and returned that the Informations were instituted in Court. Besides, Mabutol and his son, in their counter-affidavit, again admitted the facts that gave cause for the filing of unjust vexation cases against them, only they claim that the acts for which they stood charged constituted an exercise of a right. The counter-affidavit, by itself, contradicts this charge (Charge two) but in its context they admitted the acts imputed against Mabutol. Mabutol's said admissions, therefore, are inconsistent with the present charge (Charge two).

CHARGE THREE

FOR FILING AN INFORMATION (VIOLATION OF LOCAL TAX ORDINANCE-ENGAGING IN BUSINESS WITHOUT PERMIT) AGAINST ROSALINDA MABUTOL, WIFE OF COMPLAINANT GAUDENCIO MABUTOL.

The Information against Rosalinda Mabutol is for violation of the Local Tax Code for having engaged in business without a permit required by ordinance (Annex 45, the Information attached to this Memorandum).

On 21 January 1974, the City Mayor endorsed to the City Fiscal (herein RESPONDENT), the application for a business permit of Mrs. Mabutol for the purpose of seeking an opinion as to whether business could be conducted in a building that encroaches upon the bed of a creek in violation of Letter of Instruction No. 19 and Presidential Deere No. 296.

The City Fiscal in his indorsement dated 22 January 1974, answered the query. Pertinent portions thereof are hereunder quoted (Annex 15 of the Answer, Case No. 1541), to wit:

"Respectfully returned to the Office of the Honorable City Mayor, San Jose City, thru the City Secretary, the 1st Indorsement of that Office, dated January 21, 1974, requesting this Office to render legal opinion on the query submitted which, for ready reference, is quoted hereunder, to wit:

"Respectfully endorsed to the City Fiscal, this City, the herein attached application for Mayor's Permit of Mrs. Rosalinda Mabutol to operate a drug store, with the request that he renders an opinion on the matter inasmuch as the place of business is at Mabutol's building, in this city which is now under question pursuant to Letter of Instruction No. 19 and Pres. Decree No. 296, by His Excellency, the President."

...

"In view of the foregoing, it is the opinion of the City Fiscal that business to be conducted on existing construction or buildings which violate the provisions of Letter of Instruction No. 19 and Presidential Decree No.

296 may not be given business permit or license by the City Mayor as the same may constitute a tolerance in violation of a presidential act or would constitute an act to defeat a Presidential Decree or Letter of Instruction."

Consequently, and on the basis of respondent's legal opinion aforequoted, the application of Mabutol's wife for a permit to engage in business for the year 1974, was denied by the City Mayor. Instead of appealing to higher and proper authorities the said Opinion of the City Fiscal and/or the denial by the City Mayor of the application to operate a business, Mrs. Rosalinda Mabutol, again in January 1975, reiterated her application to operate a drug store in the building that encroached upon a creek bed. The application was again denied and it was returned to the applicant as shown in the receipt signed by Mrs. Mabutol (Annex 16 of Answer, Case No. 1541), which, for ready reference, is hereunder quoted, to wit:

"This is to certify that I have this day received back my application for business permit which I earlier filed with the Office of the Mayor to operate my Pharmacy located in our building located along the National Highway the construction of which, under the opinion of the City Fiscal, is illegal. However, the City Mayor advised me to get another place wherein to operate my pharmacy and that a permit will be given to me."

It is clear, therefore, to Mrs. Mabutol that she could not engage in business anywhere without a business permit, but despite this actual awareness of hers, she still engaged in business in the said illegally constructed Mabutol Building, without a business permit in open defiance of the law and duly constituted authorities. It was inevitable then that the Chief of Police, not the City Mayor, had to file a complaint against her for violation of the Local Tax Code (Annex 17, Complaint Slip, annex of Answer in Case No. 1541).

The said building in which Mrs. Mabutol conducted business is the same building ordered by the San Jose City Technical Ad Hoc Committee to be demolished for having been constructed in violation of Letter Instruction No. 19 and Presidential Decree No. 296 (Annexes 46 and 47 attached to this Memorandum), and it is the same building for which Gaudencio Mabutol was charged before Military Commission No. 6 for violation of Presidential Decree No. 296, for Illegal Encroachment into Portions of Creeks, etc. (the Charge Sheet is attached to the Motion for Consolidation, etc., dated 31 March 1976 as annex thereof), the Specifications of which, for ready reference, is hereunder quoted:

"In that the above-named accused, person subject to trial by Military Tribunals, pursuant to the first proviso of Section 2, General Order No. 42 of the President dated 4 October 1974, did on or about 24 May 1968 and for sometime prior and subsequent thereto, and up to the present, in San Jose City, Philippines, wilfully, unlawfully, and feloniously occupy a portion of the bed of Sapang Maliit Creek which is a part of the public domain, and constructed thereon a three-storey residential-commercial building, thereby encroaching upon ninety-six (96) square meters, more or less, of the creek bed, and obstructing the free flow of water through such creek, which construction the said accused failed to report to the Secretary of Public Works, Transportation and Communications, through the Director of Public Works and renounce possession thereof, or demolish after the expiration of the 90-day period prescribed by Presidential Decree No. 296." (Annex 5, Motion for Consolidation, etc., filed by RESPONDENT).

After trial, Gaudencio Mabutol was found guilty of both Specification and Charge (Annex 6 of the Motion for Consolidation, etc), and for ready reference, the Notice of Result of Trial is hereunder quoted, to wit:

"On 0145H 6 March 1976, at the Sangguniang Bayan Hall, San Jose City, Nueva Ecija, Military Commission No. 6 made the following findings, to wit:

"1. On Accused Gaudencio Mabutol:

- of the Specification—GUILTY

- of the Charge—GUILTY

"Thereafter, accused Gaudencio Mabutol was sentenced:

"a. To pay a fine of Nine Thousand Pesos (P9,000.00) and to deposit the same amount with the City Treasurer of San Jose City, the amount to be deposited within seven (7) days from 6 March 1976;

"b. The debris in the questioned lot may be removed by the accused unless the same is the subject of any other litigation;

"c. Accused Gaudencio Mabutol is ordered released from confinement upon presentation of a receipt that he had deposited the amount of P9,000.00, and should make himself available to the PC authorities until such time this case is finally disposed of by the reviewing authority.

"Promulgated at San Jose City, Nueva Ecija." (Annex 6, Notice of Result of Trial attached to Motion for Consolidated, etc.).

All these facts conclusively proved the legality of the denial of the business permit and the prosecution of Mrs. Mabutol for violation of the local Tax Code.

CHARGE FOUR

FOR PROSECUTING GAUDENCIO MABUTOL FOR AN OFFENSE IN SPITE OF THE PENDENCY OF HIS PETITION FOR MANDAMUS WHICH WAS DECIDED BY THE COURT IN HIS FAVOR WHILE THE CRIMINAL CASE WAS STILL PENDING TRIAL. (PAR. 6 OF THE COMPLAINT, CASE NO. 1541).

Criminal Case No. 1875 of the City Court of San Jose City is for violation of Ordinance No. 56, Series of 1970 (Constructing a Fence and Repairing a Warehouse without a Building Permit), filed with the Fiscal's Office on 17 September 1974 (Annex 18, Answer in Case No. 1541).

On the other hand, the Mandamus case was instituted only on 1 October 1974, to compel the City Mayor to issue the building permit (Annex 19, Petition for Mandamus, Answer in Case No. 1541). In short, the criminal case was already filed and under investigation when the petition for mandamus was filed.

The purpose of the petition for mandamus is, obviously, to counteract and neutralize the proceedings in the criminal case. Thus, the petition for mandamus is an explicit admission of herein complainant that he could not lawfully fence his premises and repair his warehouse without the permit no matter how vested his right or entitled he may be to the issuance of a building permit. Having performed the work without the building permit constituted a violation of the Ordinance requiring that a permit must first be secured and issued before the commencement of any work. In fact, even when the decision favorable to him in the mandamus case had already been promulgated, and even when it was pending appeal, herein complainant admitted the wisdom and legal prerequisite of first securing a permit before proceeding to work as shown in his filing a Motion for Execution Pending Appeal (Annex 20, attached to Answer in Case No. 1541). And refusal of a City Mayor to issue a building permit, no matter if one is entitled to it, is no justification to commence work without it and for so doing complainant committed a criminal act. This stand of the City Mayor was sustained by the trial court when it denied the motion for execution pending appeal (Annex 21, attached to Answer in Case No. 1541).

The averment that the City Fiscal (respondent) was the one who prosecuted complainant (Mabutol) in Criminal Case No. 1873 for illegal construction is not accurate. While it is true that it was the City Fiscal who investigated the case and filed the Information with the Court, it was Assistant City Fiscal Marciano S. Bascos who prosecuted him from commencement of trial to promulgation of judgment (Annex 22, attached to Answer in Case No. 1541, certification of the Clerk of Court).

The herein respondent could not have, therefore, acted with oppression and grave abuse of authority in the prosecution of Mabutol inspite of the decision favorable to the complainant in the mandamus case.

In the first place, nowhere in the decision in said mandamus case was the innocence of Mabutol declared; neither was it ruled upon that the prosecution of the criminal case should stop because the decision in the mandamus case is favorable to Mabutol. The Judge who convicted Mabutol in that criminal case should have been enjoined, not the prosecution, from acting further in the hearing of the criminal case. The herein complainant neither enjoined the trial judge nor asked him to refrain from further hearing. Where then lies the liability of the Fiscal?

The decision in the petition for mandamus was promulgated on 8 November 1974 (Annex D of Complaint, Case No. 1541) at the time when Criminal Case No. 1873 was still pending trial. On 23 December 1974, Mabutol, through counsel, filed after the prosecution rested its case a "Motion to Dismiss with Memorandum" (Annex 23 of Answer, Case No. 1541), alleging as grounds thereof, the following:

"1. That the crime charged does not constitute an offense and/or if it does, the accused is justified in committing the act complained of, under paragraph 4, Article II of the Revised Penal Code;

"2. That the accused was being charged on an invalid Information and/or Criminal Complaint under the pertinent provision of Presidential Decree No. 210 in relation to Letter of Instruction No. 180."

Nowhere in the motion did Mabutol contend that he is entitled to acquittal by reason of a favorable decision in the mandamus case or was there any averment that the criminal proceedings be enjoined by reason of said decision. The only grounds for his motion to dismiss are: (a) that the acts complained of do not constitute an offense for being justified; and (b) that the Information was filed without clearance from the Department of Justice pursuant to Letter of Instruction No. 180.

A clearance need not be secured for that purpose according to the ruling of the Department of Justice (Annex 14 of Answer, Case No. 1541) issued in connection with the investigation of the libel and Unlawful Rumor Mongering cases, which ruling, for ready reference, is hereunder quoted:

"Respectfully returned to the City Fiscal, San Jose City (Nueva Ecija), the within request dated January 10, 1974, together with its enclosures, with the comment that the same need not be forwarded to this Department for clearance as the prospective accused is not covered by Letter of Instruction No. 180 as modified by Letter of Instruction No. 231 which covers only local elective officials."

CHARGE FIVE

FOR FILING TWO INFORMATIONS (ONE FOR ROBBERY AND ANOTHER FOR ASSAULT UPON AN AGENT OF A PERSON IN AUTHORITY), BY SPLITTING A SINGLE ACT ARISING OUT OF ONE AND THE SAME ACT.

The charge is baseless as the following show:

The affidavit of Alejandro Garcia (Annex 24 of Answer, Case No. 1541), Deputy Clerk of Court of Branch II, City Court, San Jose City, alleges that:

"Mr. G. Mabutol forcibly snatched from me the copy of the decision I was then copying and ran down stairs."
(Answer No. 5 of Question No. 5 of Annex (24).

It is the basis of the complaint for robbery that was committed in the court room, second floor of the Court Building.

The complaint for assault was considered by the Fiscal as only one of Resistance and Disobedience of an Agent of

a Person in Authority. It transpired at the ground floor of the court house. The deputy clerk of court ran after Mabutol and when overtaken, Mabutol resisted the agent who demanded of him the return of the document.

In connection with that robbery case, Mabutol filed a Motion to Quash on the ground:

"That the allegations of the information at bar are not constitutive of the crime of robbery charged in said information." (Annex 25 of Answer, Case No. 1541).

In the Resistance and Disobedience case, Mabutol, likewise, filed a Motion to Quash (Annex 26 of Answer, Case No. 1541), alleging as grounds thereof, the following:

"1. That the facts charged do not constitute an offense;

"2. That the allegations of the information embodies more than one offense."

Nowhere in the said Motions to Quash is an averment that "said cases arises out of one and the same act but was purposely splitted into different causes of actions by the City Fiscal in grave abuse of his discretion and with the intention of harassing and oppressing the herein complainant." (Allegation No. 7 of Complaint, Case No. 1541). However, realizing his mistake, Mabutol, on 6 February 1976, withdrew his motions to quash, thus the order of the Court, viz:

"When this case was called for hearing on the motion to quash, counsel for the accused manifested that he will withdraw the motion to quash;

WHEREFORE, acting on the said motion, the motion to quash is hereby withdrawn, and the arraignment of the accused is hereby ordered." (Annex 3 of the Motion for Consolidation, etc., filed by Respondent).

Arraignment was ordered and made; accused Mabutol pleaded not guilty (Annex 4 of the Motion for Consolidation, etc.).

Inescapable of notice is that the supposed "grave abuse of discretion" of respondent has never been raised in the Motion to Quash. It was raised for the first time only before this Honorable Court. These are matters which should have been raised in the Courts below. The charge, therefore, has not been sufficiently established.

CHARGE SIX

FOR HAVING ACTED AS LAWYER AND ADVISER TO THE CITY MAYOR IN BOTH OFFICIAL AND PRIVATE MATTERS TO OPPRESS COMPLAINANT AND FAMILY AND HAS COMMITTED GRAVE ABUSE OF AUTHORITY IN RENDERING RULINGS AND RESOLUTIONS WITHOUT OBSERVING THE DILIGENCE TO AVOID MISCARRIAGE OF JUSTICE. (PARAGRAPH (c), COMPLAINT IN CASE NO. 1541).

In connection with the performance of his duties as City Fiscal, the pertinent provisions of Republic Act No. 6051, known as the Charter of San Jose City, are hereunder quoted:

"SEC. 29. The City Fiscal.— His powers and duties.— There shall be a city fiscal and an assistant city fiscal who shall be the chief and assistant chief of the law department, and who shall discharge their duties under the general supervision of the Secretary of Justice. The city fiscal shall be the chief legal adviser of the city and all offices and departments thereof. He shall have the following powers and duties:

"(a) He shall personally or through any assistant, represent the city in all civil cases wherein the city or any officer thereof, in his official capacity, is a party; and shall prosecute and defend all civil actions related to or connected with any city officer or interest." Even in cases where the City Officials are sued as private individuals, for as long as the actions against them arise out of the performance of their official duties, the City

Fiscal is not prohibited from acting as their counsel, as ruled in the case of *Quimsing v. Lachica*, 2 SCRA 182, 183, vfe.:

"Although Section 64 of the Charter of the City of Iloilo (Commonwealth Act No. 158) pursuant to which the City Fiscal thereof, 'shall represent the city in all civil cases wherein the city or any officer thereof in his official capacity is a party,' imposes upon the city fiscal the duty to appear in the cases specified, it does not prohibit him from representing city officers sued as private individuals on account of acts performed by them in their official capacity, specially when they appear to have acted in good faith and in the earnest belief that they were acting in accordance with a legal provision." (*Italics supplied*).

This charge against the fiscal for acting as legal adviser to the City Mayor and for having acted partially and with bias was first brought to the attention of the Honorable Secretary of Justice when Mabutol, on 27 January 1975, wrote the Honorable Secretary for the designation of "an impartial and unbiased investigator from the Department of Justice," (Annex 27, of Answer, Case No. 1541). The letter was indorsed by the Chief State Prosecutor on 3 February 1975 to the City Fiscal for comment (Annex 28, id.). On 17 February 1975, the City Fiscal, in his 2nd Indorsement (Annex 29 of Answer, Case No. 1541), after enumerating in chronological order why Mabutol was being charged and investigated, stated that:

"There is, however, truth to his claim that I had been the lawyer of the Mayor, in my capacity as City Fiscal and Counsel of City Government Officials who are charged in connection with the exercise of their official duties. For this purpose the City Fiscal is, therefore, without objection to the designation of a Special Prosecutor or the Provincial Fiscal of Nueva Ecija to take over as investigator." (Page 5; last paragraph of Annex 29 of Answer, Case No. 1541).

The Honorable Secretary of Justice, however, in a letter coursed thru the Chief State Prosecutor, instead of relieving the City Fiscal, returned the records to him for further proceedings, viz.:

"I am returning herewith the complete records of the complaint filed against Mayor Arturo B. Pascual of said city, for violation of the Anti-Graft and Corrupt Practices Act and LOI No. 19-A, calling your attention to Department Circular No. 34 dated August 30, 1974, relative to paragraph 11 of the Rules and Regulations implementing Letter of Instructions No. 180 as modified by Letter of Instructions No. 231 dated December 5, 1974, requiring investigating fiscals to determine ex-parte from the complainant's evidence if a probable cause exists as to make us believe that an offense has been committed by the" official concerned so as to warrant clearance for conducting the necessary preliminary investigation and so recommends the same.

"Strict compliance thereto is hereby enjoined." (Annex 30 of Answer, Case No. 1541).

The directive in the above letter was reiterated in the 1st Indorsement of the Chief State Prosecutor denying the request for designation of another investigator, which reads:

"Respectfully returned to City Fiscal Manuel R. Maza, San Jose City his within letter dated June 19, 1974, requesting for the designation of Special Prosecutor to handle CS No. 261 (74) entitled 'Deputy Chief of Police v. Gaudencio Mabutol' for alleged violation of Presidential Decree No. 296, informing him that his within request is denied. He is directed to continue the preliminary investigation of the aforesaid case and thereafter to forward the entire records of the case to the Judge Advocate General, Armed Forces of the Philippines, thru the Provincial Commander, for their disposition, the case being one falling under the exclusive jurisdiction of the Military Tribunal under Par. 13 of General Order No. 12." (Annex 31 of Answer Case No. 1541).

The rulings of the City Fiscal for which he is charged by complainant of having acted with grave abuse of discretion that resulted in the miscarriage of justice consists of the following:

"(a) Legal Opinion No. 98, dated 18 October 1973, (Annex 35 of Answer, Case No. 1541), wherein the City

Fiscal, upon a query of the City Mayor, ruled:

"WHEREFORE, it is the opinion of the City Fiscal that the City Mayor can now implement Letter of Instruction No. 19 for the purpose of causing the demolition of the building of Gaudencio Mabutol after the City Engineer and the Chief of Police shall have presented to the City Mayor the certifications above-stated."

"(b) Legal Opinion of the City Fiscal, dated 22 January 1974 (Annex 15 of Answer, Case No. 1541), which led to the denial of the application for a business permit of Mrs. Rosalinda Mabutol, wherein he ruled:

"In view of the foregoing, it is the opinion of the City Fiscal that business to be conducted on existing construction or buildings which violate the provisions of Letter of Instruction No. 19 and Presidential Decree No. 296 may not be given business permit or license by the City Mayor as the same may constitute a tolerance in violation of a presidential act or would constitute an act to defeat a Presidential or Letter of Instruction."

"(c) Legal Opinion No. 11, dated May 14, 1974, (Annex 36 of Answer, Case No. 1541), wherein the City Fiscal, as member and Legal Adviser of the San Jose City Ad Hoc Technical Committee implementing LOI 19 and P.D. No. 296, ruled:

'IN VIEW OF THE FOREGOING, it is the opinion of the City Fiscal that the decision of the greater number of the members of the Ad Hoc Committee to grant Mr. Gaudencio Mabutol the privilege to acquire a 250-square meter area of the Ilusorio property adjacent to the opposite bank of the creek to be excavated and to refill the bank of the Cumabol Creek adjacent to the building of Gaudencio Mabutol in order that said Mr. Mabutol's building will not be demolished in spite of openly occupying a 96-square meter area of the bed of Sapang Cumabol is illegal and cannot be countenanced by both the provisions of Letter of Instruction No. 19 and Presidential Decree No. 296.'

"(d) Legal Opinion No. 1 dated 10 January 1975 of the City Fiscal (Annex 33 of Answer, Case No. 1541), wherein he ruled:

'WHEREFORE, it is the opinion of the City Fiscal that the City Mayor should appoint barangay chairman and barangay leaders in accordance with the provisions of Section 5 of Presidential Decree No. 210 and it is the opinion, further, of the City Fiscal that the district leaders and the ward leaders appointed by the City Mayor by virtue of, and pursuant to, his powers vested in him by the provisions of the City Charter are not the same, and could not be classified as the barangay chairman and barangay leaders within the meaning of Presidential Decree Nos. 86, 210 and 299.'

All the above-cited legal opinions adversely affected complainant Mabutol and his wife, Rosalinda Mabutol; but this notwithstanding they failed or refused to question the same formally before higher and proper authorities. Instead, the complainant brought the matter to this Honorable Court as a cause of action for disbarment (p. 133, rec, Case No. 1541), for which reason the complaint on such allege causes for disbarment, should not be entertained in this proceeding.

CHARGE SEVEN

FOR THREATENING COMPLAINANT AND BARANGAY CHAIRMAN FRANCISCO ANTONIO WITH PROSECUTION OF MORE CASES UNLESS THEY CONSENT TO THE DISMISSAL OF THE COMPLAINT FILED BY THEM AGAINST THE CITY MAYOR WITH THE DEPARTMENT OF NATIONAL DEFENSE AND DEPARTMENT OF LOCAL GOVERNMENT AND COMMUNITY DEVELOPMENT (PARAGRAPH D OF THE COMPLAINT)

Under this Charge Seven, complainant alleges that respondent urged him and Barangay Chairman Francisco Antonio to withdraw their complaints against City Mayor Arturo B. Pascual for violation of Anti-Graft and Corrupt Practices Act and for Backsliding that was filed with the Department of National Defense, with alleged

accompanying threat that if they refuse to do so, the City Mayor would certainly cause the demolition of his (Mabutol's) building and that many more cases would be filed against Barangay Chairman Antonio (Annexes E and F of Complaint, Case No. 1541, Affidavits of Mabutol and Antonio).

This charge is likewise without factual basis.

In the first place, while it is true that both complainant Mabutol and Barangay Chairman Antonio are co-complainant in that case filed against the City Mayor, the other co-complainant therein are the Vice Mayor, Benjamin Saturno, and City Councilor Apolinario Buenaventura. Even if they had to withdraw, still the complaint could not be withdrawn as the Vice Mayor and the City Councilor, could continue to prosecute even without the said two. In fact, when said case (docketed in the Fiscal's Office as C.S. No. 700[75] was investigated, Mabutol, for want of personal knowledge on the subject of the charge chose not to testify (p. 249, rec, Case No. 1541).

In the second place, before respondent would ask for the withdrawal of cases against the City Mayor, he would have to ask first for the withdrawal of the two civil cases for damages filed against him by Gaudencio Mabutol, docketed in the Court of First Instance of Nueva Ecija as Civil Cases Nos. SD-569 and SD-623 (Ibid). In short, respondent, before he saves the neck of others would have to save his first. That would have been more logical.

The Complaint, Case No.
1541, in its Entirety.

The Charges, in their entirety, point out to one thing: THAT RESPONDENT HAS COMMITTED GRAVE ABUSE OF DISCRETION AND AUTHORITY IN OFFICIALLY TAKING ACTION IN THE CASES FILED AGAINST COMPLAINANT GAUDENCIO MABUTOL, AND HIS WIFE.

However, the foregoing had shown that there was no "capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction." (Chemplex (Philippines), Inc., et al., vs. Hon. Ramos Pamatian, et. al., 57 SCRA 408,410). Besides, grave abuse of discretion is present only when:

"... the disputed act of the lower court violates the fundamental norms and rules of injunction or it constitutes an act beyond the limits of discretion effecting an injustice, when it is clearly against logic and effect of such facts as are presented by the aggrieved party in support of his application or when it is exercised to an end or purpose not justified by and clearly against reason and the undisputed facts."

All the acts and omissions attributed to the respondent as constituting grave abuse of discretion, grave misconduct, malpractice and gross ignorance of the law had been previously elevated and questioned by complainant before higher authorities. The then Secretary of Justice, now a member of this Honorable Court, Hon. Justice Vicente Abad Santos, in recommending the dismissal of the charge, which recommendation was sustained by the Office of the President, said:

"I find no basis to hold respondent guilty as charged. The records fail to yield any proof of partiality on the part of respondent. The acts complained of relate to acts done by him in the performance of his official duties. Thus, it appears that respondent, among other things, issued Legal Opinion No. 98 to the effect that 'the City Mayor can implement Letter of Instructions No. 19 for the purpose of causing the demolition of the building of Gaudencio Mabutol'. The instant complaint is but a reiteration of previous complaints filed against respondent and it is obvious that the same is merely intended to harass him. He should not be faulted for lawfully performing his duties as a prosecuting officer." (Annexes 2, 3, Motion to Dismiss dated Sept. 30, 1976).

II. As to the Complaint
of Reyes and Delizo, Jr.,
Case No. 1544.

The charges in this complaint arose out of respondent's official actuation and conduct in the investigation of the complaint for abortion filed with the City Fiscal's Office by Lorida Duran against Dr. Ben V. Reyes and Federico Delizo, Jr. These charges are:

FOR GRAVE ABUSE OF AUTHORITY FOR HAVING FILED AN INFORMATION FOR ABORTION AGAINST HEREIN COMPLAINANTS WITHOUT AFFORDING THEM THE OPPORTUNITY TO APPEAL TO THE SECRETARY OF JUSTICE THE RESOLUTION FINDING THE EXISTENCE OF PROBABLE CAUSE AGAINST THEM, FOR FALSIFICATION OF OFFICIAL DOCUMENTS FOR HAVING STATED IN THE SAID RESOLUTION THAT FEDERICO DELIZO, JR. HAD BEEN CHARGED WITH FIVE CRIMINAL CASES WHEN IN FACT HE WAS NOT, AND FOR CONNIVING WITH TWO LAWYERS WHO INSTIGATED AND FABRICATED THE COMPLAINT FOR ABORTION.

THE FACTS OF THE CASE

(CASE NO. 1544)

ADMITTED AND UNDISPUTED.

On 11 July 1975, Lorida Duran, 16 years of age, single, filed with the City Fiscal's Office a complaint for abortion (Annex 1 of Answer, Case No. 1544) against Dr. Ben V. Reyes, a practicing physician, and Federico Delizo, Jr., her sweetheart (Annex 2 of Answer) and the letter of Dr. Elpidio Y. Custodio, Assistant City Health Officer, to the Chief of Police, giving technical and medical meaning, description, use and effect of the drugs known as Syntocinon and Hormotone-T (Annex 3 of Answer, Case No. 1544). On the basis of these documents, a preliminary investigation was conducted by respondent pursuant to Presidential Decree No. 77 by propounding clarificatory questions to complainant (Annex 24 of Answer, Case No. 1544). Finding that probable cause for abortion existed, a subpoena was directed to Dr. Reyes and Federico Delizo, Jr. who, in compliance therewith, submitted, through counsel, their controverting affidavits (Annexes 22 and 23 of Answer, Case No. 1544). Both, however, never appeared in person and did not submit themselves to clarificatory questioning as they had waived their right to appear (Annex 10 of Answer, Case No. 1544). But the complaint for abortion was further investigated with the admission of the controverting affidavits and it was submitted for resolution on 28 July 1975.

Atty. Crispulo Esguerra, counsel for Dr. Reyes and Delizo, Jr., also, on 28 July 1975, filed a manifestation praying that—

"... in the event that the findings is to the effect that there exists a probable cause, respondents and counsels be given sufficient time to file the corresponding pleadings with the Department of Justice before any information is filed in Court;" (Annex 6 of Answer, Case No. 1544).

Acting on the manifestation, the City Fiscal on 31 July 1975, said:

"... However, in the manifestation submitted by Atty. Crispulo Esguerra, counsel for respondents, he made himself presumptuous by assuming that the resolution of the Fiscal, if probable cause exists, is erroneous and, therefore, should be appealed to the Department of Justice for review. One should read the resolution first before taking the stand that the same should be reviewed by the Department of Justice. Lawyers should be very careful in their pleadings so that Investigating Fiscals should not be influenced one way or the other in their resolution of cases specially in so important as the case at bar. . . ." (Annex 7 of Answer, id.).

Likewise, on 31 July 1975, respondent resolved the case and found the existence of probable cause against both (Annex 19 of Answer, Case No. 1544).

Consequently, on 4 August 1975, the Information for Abortion was filed with the Court against both, complainant herein, and Delizo, Jr. (Annex A of Complainant, Case No. 1544).

On 4 August 1975, Atty. Crispulo Esguerra filed with the Fiscal's Office a Manifestation, dated 2 August 1975, praying that he be allowed to pursue legal remedies with the Department of Justice before the Information against his clients is filed with the Court (Annex 8 of Answer, Case No. 1544). This request, however, was then already moot and academic because the Information by then was already in the hands of the Chief of Police who was instructed to file it with the Court of First Instance at Cabanatuan City (Annex 9 of Answer, Case No. 1544).

On 7 August 1975, the City Fiscal received a telegram from the Chief State Prosecutor directing him to forward to the Department of Justice for Review the records of the case (C.S. No. 415(75). He complied that very date (Annex 18 of Answer, Case No. 1544).

On 8 August 1975, respondent received another telegram from the Department of Justice requiring him to comment on the petition for review. He also complied and accordingly submitted the required comment (Annex 17 of Answer, Case No. 1544).

Later, the Department of Justice returned the records of the case to the City Fiscal with the instruction that he conduct a re-investigation of the case (Annex 20 of Answer, Case No. 1544), because of an affidavit of Lorida Duran submitted to the CIS on 26 August 1975 (Annex C of Complaint), contradicting her previous statement (Annex 2 of Answer).

The City fiscal did so as instructed. After conducting the re-investigation and finding that Lorida Duran had turned hostile to the cause of the prosecution, he filed on 29 September 1975, with the Court a motion to dismiss the case on the ground that the principal witness turned hostile (Annex 21 of Answer, Case No. 1544). The Court granted the motion and dismissed the case.

ON THE CHARGE THAT COMPLAINANTS WERE NOT AFFORDED THE CHANCE TO APPEAL TO THE DEPARTMENT OF JUSTICE THE RESOLUTION OF THE FISCAL FINDING THE EXISTENCE OF A PROBABLE CAUSE.

In paragraph 4 of the complaint (Case No. 1544), complainants contend that herein respondent ignored the plea ". . . to afford them a chance to appeal the findings of the respondent to the Department of Justice . . . and this, respondent had deliberately done on purpose in order that the complainants shall be arrested immediately upon issuance of the corresponding warrants of arrest . . .". This contention is without basis. Complainants, through counsel, were informed beforehand as to the procedure to be followed in cases of review of the findings or resolutions of the City Fiscal. The procedure, as quoted in the resolution of the City Fiscal, dated 31 July 1975 (Annex 7 of Answer, Case No. 1544), is as follows:

"Respectfully returned to City Fiscal Manuel R. Maza, San Jose City, the within records of CS No. 202(74) against Francisco Tallara, for alleged other forms of trespass, subject of his first indorsement, dated 3 July 1974, advising him that petitions for review or appeal from resolutions of Provincial and City Fiscals are matters that should be addressed to this Department after exhausting the remedies available in his office.

"If the petition for review is given due course, this Office will send for the records. Unless we call for it, your office should not forward the 'expediente' to us on the mere manifestation or representation of parties to the case appealing the resolution of your office." (Italics supplied).

Herein complainants did not at all file a motion to seek reconsideration of the Fiscal's resolution finding the existence of probable cause against them. What complainants did was to file a manifestation, not a motion, on 28 July 1975 (Annex 6 of Answer, Case No. 1544), even before the resolution was issued praying that they be given sufficient time to file the corresponding pleadings with the Department of Justice before the filing of an Information, which is not proper and for which RESPONDENT, in acting on the same, held:

". . . One should read the resolution first before taking the stand that the same should be reviewed by the Department of Justice. Lawyers should be very careful in their pleadings so that Investigating Fiscals should not be influenced one way or the other in their resolution of cases in so important as the case at bar." (Annex 7 of Answer, Case No. 1544).

Two days before the filing of the Information on 2 August 1975 and two days after receipt by complainants of the resolution on 31 July 1975, complainants again filed a manifestation (Annex 8 of Answer, Case No. 1544), praying that they be given sufficient time to pursue legal remedies before the Department of Justice. Considering that there were no reasons advanced in said manifestation, respondent ruled:

"Considering further the manifestation, the same does not contain any reason why legal remedies should be further pursued so as to stop the Fiscal from filing the information in accordance with his resolution, dated July 31, 1975, finding the existence of a probable cause against respondents. It is not enough that lawyers should state that they will pursue legal remedies. They should likewise, state at least even for the time being that the proper remedy has not been pursued, the ground and reasons to justify the pursuit of further remedies, otherwise, a mere request to delay the filing because legal remedies will be further pursued will be dilatory. In Court, this kind of manifestation will be considered as a mere scrap of paper. Furthermore, in the Resolution of the City Fiscal, dated July 31, 1975, which was promulgated in connection with the respondents' manifestation through counsel, dated July 28, 1975, the City Fiscal quoted the procedure to be taken to cause the review or appeal of resolutions of City Fiscals but in spite of this, counsel for the respondents chose to ignore the same and instead moved that he is filing a petition for review with the Department of Justice disregarding this office to correct its error if there is any that may be shown to him by the respondents.

"Finally, the City Fiscal has to comply with Department of Justice Circular No. 23, dated June 16, 1975, wherein under par. (5) thereof, the City Fiscal should file the information within five days upon the issuance of a resolution that finds the existence of a probable cause against respondent. Let this matter be made known to respondents, through their counsel." (Annex 9 of Answer, Case No. 1544).

The manifestation thus denied, respondent City Fiscal filed the Information on 4 August 1975 (Annex A of Complaint, Case No. 1544), pursuant to the provisions of Department of Justice Circular No. 23, dated 16 June 1975, the pertinent provisions of which reads:

". . . If the final resolution is for the filing of the case in court, the corresponding information shall be filed within five (5) days after such final resolution is issued. . . ." (Par 3, Circular No. 23, dated 16 June 1975).

At any rate, and notwithstanding the filing of the Information in Court, the records were forwarded to the Department of Justice for review on 7 August 1975 (Annex 18 of Answer, Case No. 1544). After a review, the Department of Justice in its 2nd Indorsement of 3 September 1975, (Annex 20 of Answer, Case No. 1544), returned the records thus:

"Respectfully transmitted to the City Fiscal of San Jose City, the attached sworn statement of Lorida Duran together with the records of C.S. No. 415(75) entitled, "LORIDA DURAN VERSUS DR. BEN REYES and FEDERICO DELIZO, JR., for Abortion."

"If the aforesaid statement of the complainant Lorida Duran will be sufficient ground to alter or modify your resolution of July 31, 1975, it is directed that you conduct a reinvestigation for purposes of considering and possibly ratifying the attached sworn statement."

Thus, the return by the Honorable Secretary of Justice of the records, implies that he found no cogent reason to disturb the findings of respondent.

ON THE CHARGE OF FALSIFICATION OF OFFICIAL DOCUMENTS FOR HAVING STATED IN THE RESOLUTION THAT FEDERICO DELIZO, JR. HAS BEEN CHARGED WITH FIVE CRIMINAL CASES

WHEN IN FACT HE WAS NOT.

Complainants, in paragraph 5 of the complaint, alleged:

"That the respondent, . . . deliberately made it appear, with malice aforethought, that the statement of the complainant Federico Delizo should not be believed as he has taken the solemnity of his oath lightly as when he claimed that he is a law-abiding citizen and has not violated any law when as per records of his office, the said complainant having been charged of five offenses, hence he is not clean as he claim, is a lie, a concoction and a falsehood for which the herein respondent should be held liable, . . ."

Answering the above-stated charge, herein respondent, in his answer, averred:

"RESPONDENT vehemently and specifically denies the allegations contained in paragraph 5 of the complaint, the truth of the matter being that respondent has no reason to entertain malice against complainant Delizo and no basis to concoct falsehood against him as respondent has never known personally and, perhaps, has never seen, said complainant even up to the stage of the preliminary investigation of the abortion case as he only appeared through Counsel (Annex 10, tsn of 28 July 1975), and the error was due to the wrong information given by the Docket Clerk, Miss Zenaida G. Bascos, who admitted her error was due to her mistaken belief that Federico Delizo, herein complainant, is the same person by the name of Freddie Delizo y Cabie charged five (5) times before the City Fiscal's Office (Annexes 11, 12, 13, 14 and 15, Complaint Slips against Freddie Delizo), and this error was explained by said Docket Clerk (Annex 16, Affidavit of Miss Bascos). (p. 6 of Answer, Case No. 1544).

The Docket Clerk, explaining why and how she committed the wrong information given to the City Fiscal, in her sworn statement, declared:

"3. That on July 30, 1975, when the City Fiscal was drafting his resolution in the case of Lorida Duran vs. Federico Delizo, Jr. and Dr. Ben Reyes for Abortion docketed in the Office of the City Fiscal as CS No. 415 (75), the City Fiscal asked me to look into the records on file in the office to determine whether Federico Delizo, Jr. has any case filed with the Office of the City Fiscal either pending, filed in Court, and/or terminated, and in compliance with the order of the City Fiscal, I looked into the records and found that Freddie Delizo was charged in our office in five instances enumerated as follows:

- CS No. 3304 entitled Nery Martin versus Freddie Delizo for Grave Threats;
- CS No. 3305 entitled Nery Martin versus Freddie Delizo for Rape;
- CS No. 555 entitled Danilo Tabalno versus Freddie Delizo for Theft;
- CS No. 515(74) entitled Camilo Bascos versus Freddie Delizo for SI. Phy. Inj.;
- CS No. 155(74) entitled Jaime Tolentino versus Freddie Delizo for SI. Phy. Inj.

"4. That again, on July 31, 1975, when the City Fiscal was already finalizing his resolution in the case of Lorida Duran vs. Federico Delizo, Jr. et al., the City Fiscal directed me to recheck the records and verify the truth of my first information given to him on July 30, 1975 and as a result of my verification I gave him the same information;

"5. That the cases I saw were those of Freddie Delizo and that I have the honest belief that this Freddie Delizo is one and the same Federico Delizo, Jr. who is the respondent in the Abortion case filed by Lorida Duran. My belief was based on my personal information from Freddie Delizo who admitted to me, when he was working

for his bail, that his name is also Federico Delizo, Jr. and since then I am of the belief that Freddie and Federico are one and the same person;

"6. That when I gave the information to the City Fiscal that Federico Delizo had five cases filed against him in the Office of the City Fiscal, I knew of a fact that the five cases I have mentioned were those against Freddie Delizo but believing honestly that Freddie and Federico are one and the same person; I informed the City Fiscal that Federico had five cases and even gave to him the number of the cases, the nature of the cases and status of the cases in writing which he copied it or was the basis of his statement in his resolution in the case of Lorida Duran vs. Federico Delizo, et al., dated July 31, 1975;

"7. That even after the Resolution was already typewritten in final form and before he signed it for distribution to the parties concerned, the City Fiscal again asked me as to the number of cases if any filed against Federico Delizo and I have given him the same information;" (Annex 16 of Answer, Case No. 1544)."

The true copies of the complaints against Freddie Delizo y Cabie are marked Annexes 11 to 15 of the Answer, Case No. 1544.

In the Case of U.S. vs. Gomez, 3 Phil. 436, this Honorable Court ruled that:

"There can be no conviction of the offense of knowingly using a false document in the absence of proof of the defendant's knowledge of falsity."

The error or falsity was committed by reason of respondent's reliance on the assurances of the Docket Clerk. Thus, in the case of U.S. vs. San Jose, 7 Phil. 204, it was held that conviction of falsification does not lie when the facts are consistent with good faith. Thus, it was held that reliance upon the representation of a subordinate whose duty it is to give the information desired is good faith, viz.'.

"In the said case the Principal Clerk of the Municipal Treasurer's Office, acting as local Civil Registrar, signed a certified copy prepared by a clerk in his Office, who was the custodian of the Registry of Births. It turned out that the same copy contained falsities. We then held that the accused Principal Clerk was not guilty of falsification through reckless imprudence; that he had the right to rely on a subordinate employee; and that it was not necessary for him to personally compare the copy with the original entry in the Registry of Births. The case of the herein appellant is even stronger, for, as stated earlier above, the voucher in question and the supporting papers were previously passed upon and approved by the General Manager, Corporate Treasurer and Corporate Auditor of the NARRA." (People vs. Sarte, CA, 68 O.G. No. 34, CA-G.R. No. 05809-CR, Aug. 7, 1971) citing People vs. Mendoza, 1942 O.G. p. 186, March 23, 1942).

As seen from the above-quoted sworn statement of Docket Clerk, Zenaida Bascos, Respondent exerted efforts to verify to avoid error. If at all, the mistake could be considered honest amounting to no criminal or administrative liability. At any rate, even if complainant Delizo is without any criminal record, as it turned out he has none, the conclusion, out of facts produced during the investigation, the conclusion that probable cause exists will be the same. Thus, in his resolution (Annex 19 of Answer, Case No. 1544, pp. 4-5), respondent found and ruled that:

"Respondent Delizo stated that 'as of now we are no longer engaged with one another and this started when she intimated to me her desire, that we get married already.' He did not, however, state when the engagement was terminated. The intention of the complainant in having romantic relations with Delizo was to get married; that is only expected, an honorable act and intention. If nothing happened between them or if they had not indulged in sexual relations, no woman, aided by her mother, will go to the extent of fabricating charges, more specially so when the family honor and a woman's virtue is at stake. What more, it would have been much easier to file charges of seduction, instead of abortion, if the only purpose is to harass. As a matter of fact, the complainant is again pregnant, three months on the family way. The author pointed to is respondent Delizo. At least, this second pregnancy is a fact and not denied by respondents in their controverting statements although they did

not, however, admit it."

The unintentional inclusion of the facts or matters are, therefore, not controlling in the resolution of the case.

ON THE CHARGE OF CONNIVING
WITH TWO LAWYERS WHO
INSTIGATED AND FABRICATED THE
COMPLAINT FOR ABORTION.

This charge, pleaded in paragraph 3 of the complaint, Case No. 1544, for ready reference, is hereunder quoted:

"3. That the aforementioned case was instigated, planned and fabricated by persons who are very close and intimate with the herein respondent for the purpose of harassing and destroying the honor and dignity of the complainants, they being law-abiding citizens, employee in the government and private medical practitioner, respectively, to realize and satisfy the appetite for vengeance of Mayor Arturo B. Pascual of San Jose City, and the conspirators are Attys. George Y. Cadhit and Francisco Violago, who are now also charged before the Honorable Supreme Court for disbarment and the Chief of Police Leodegario Pascual, now charged before the NAPOLCOM."

Insofar as the above-indictment is concerned, the undisputed facts are: Atty. Francisco Violago is not, and has never been a practising attorney and that both lawyers, Attys. Violago and George Y. Cadhit, never appeared before the City Fiscal to prosecute the abortion case against herein complainants. The complainant, Lorida Duran, appeared with her mother, Erlinda Duran, without counsel. Lorida Duran, a college student who speaks English with some degree of fluency, brought the complaint alone, accompanied only by her mother. In truth, her sworn statement (Annex 2 of Answer, Case No. 1544) was prepared entirely at the Police Department with no showing that the two lawyers had any participation in the preparation or execution thereof. If Atty. Violago had any sort of attitude towards the Fiscal, it will not most likely be favorable for the reason that the Fiscal's Office had filed an Information for Theft against his son, Ramon Violago, [(Annex 4 of Answer, Case No. 1544) (pp. 155-156, rec. Case No. 1544)].

Complainants contend that the complaint for Abortion against them was planned, instigated and fabricated by Attys. Cadhit and Violago and Chief of Police Leodegario Pascual. In support of the charge, complainants attached to their complaint the second affidavit of Lorida Duran, (Annex C of Complaint, Case No. 1544) which, in some material points contradicted the affidavit given in support of the complaint for Abortion. The second affidavit shows that Lorida Duran and Federico Delizo, Jr. are sweethearts (Q. No. 5 of Annex C), which is exactly the same admission in the first affidavit (Annex 2, Q. No. 6). The second affidavit shows that Lorida Duran was sick of Influenza in the month of February, 1975 (Q. No. 19, Annex C), the same admission in the first affidavit (Q. No. 24, Annex 2). In the second affidavit, Lorida Duran admitted that she was pregnant again as of March, 1975 and that her mother gave her to Federico Delizo, Jr. to live together at Pantabangan since August, 1975 (Q. Nos. 42-47, Annex C), the same nature of admission in the first affidavit, that is, of second pregnancy, by Federico Delizo, Jr. (Q. No. 27, Annex 2). These admissions, in both supporting and desisting affidavits, conclusively proved that Lorida Duran became pregnant twice by Federico Delizo, Jr. the first was in November, 1974, and the second was in March, 1975. Since there could be no birth within four intrauterine months, the only inescapable conclusion is that there was an abortion, or at least miscarriage, between December, 1974 and February, 1975. The Information for Abortion recites that it took place on 10 February 1975.

The administrative complaint averred (paragraph 9 of Complaint), that Lorida Duran, "stricken with remorse, executed affidavit . . . that the charge is in fact a fabrication and a concoction, . . ." It further alleged that it was designed by "the named scheming individuals to destroy the good name and honor of the herein respondents." A woman, 16 years of age, who had sexual intercourse with a man without the benefit of marriage, had an abortion

in February, 1975, and barely a month thereafter was again pregnant; it is doubtful if she was really stricken with remorse; more doubtful in her claim that her charge of abortion was a "fabrication and a concoction"?

Witness for the complainant, Erlinda Duran, mother of Lorida, in her sworn statement (Annex C-I of the Complaint), declared that Lorida had complained against Dr. Ben Reyes and Federico Delizo, Jr. for abortion, (Q. No. 4, Annex C-I), and her daughter told her that Lorida was brought by Federico Delizo, Jr. to Dr. Reyes who injected her with a drug, and three nights thereafter she had a miscarriage (Q. Nos. 5 to 8, Annex C-I). These proved the fact that Lorida Duran had an abortion during her fourth month of pregnancy.

As already stated, Federico Delizo, Jr. took Lorida Duran to live with him on 16 August 1975 (Q. Nos. 44-45, Annex C). While living without benefit of marriage, Lorida Duran, on 26 August 1975, and Erlinda Duran, who gave her daughter to live with a man not her lawfully wedded husband, on 8 September 1975 (Annexes C and C-I), executed their respective affidavits of desistance. It was while Lorida Duran was in the custody of herein complainant Federico Delizo, Jr. cohabiting with him, that she turned hostile and declared that the abortion is a fabrication and a concoction.

Complainant claims that they are men of honor and dignity, law-abiding citizens and a private medical practitioner with a good name. Yet, the records show that Dr. Ben Reyes was charged with Qualified Seduction before the Court of First Instance of Nueva Ecija, Branch Six, which was docketed therein as Criminal Case No. SD-36(70) (Annex 5 of Answer, Case No. 1544).

It is clear, therefore, that the charges against respondent in this other case (No. 1544), are, as in the first (No. 1541), unfounded.

CONCLUSION AND RECOMMENDATION

WHEREFORE, it is respectfully recommended that the herein two complaints for disbarment against City Fiscal Manuel R. Maza of San Jose City, be dismissed.

Respectfully submitted.

Manila, Philippines, February 13, 1981.

(Sgd.)

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Solicitor General

(Sgd.)

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