

RE: AC NO. 04-AM-2002 (JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES)

A.M. No. CA-02-15-P. June 03, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Court of Appeals (CA) stenographer Josejina Fria (complainant), by a January 9, 2002 complaint-affidavit[1] filed on February 5, 2002, charged her co-stenographer Gemiliana De los Angeles (respondent) with grave misconduct arising from the loss of money kept in the drawer of complainant's table in the office.

Complainant and respondent were in 2001 both assigned to the staff of CA Associate Justice Marina Buzon.

As Atty. Amelia Alado, also a member of the staff of Justice Buzon, took a leave of absence for six months starting November 2001, she authorized complainant to receive her salary and other benefits during her absence.[2] Complainant would then wait for Atty. Alado's instructions on what to do with the amounts received.[3]

As of December 20, 2001, complainant had in her custody the amount of P10,150.00 representing the salary and other benefits of Atty. Alado which she placed in a brown envelope. On even date, she also had in her possession the amount of P5,500.00 belonging to her which she placed in a white envelope. She inserted both envelopes of money in her logbook which she placed and locked inside the drawer of her table at the mezzanine of the Office of Justice Buzon.

The drawer could be opened, however, by any key which could fit.[4] Complainant had even borrowed before a key of Gertrude Remolacio, also an officemate, to open the drawer.[5] In fact a paper clip or the bread knife that lies around the office could be used to open it.[6]

Before complainant kept her and Atty. Alado's monies inside the drawer, she, at around 10:00 a.m. of December 20, 2001, counted them[7] within the view of everyone in their office at the mezzanine including respondent who also occupied a table thereat. The counting done, complainant filled up bank deposit slips reflecting the amounts she was to deposit for the account of Atty. Alado and for her own account. She then inserted the two envelopes containing the monies and the respective deposit slips in a logbook which she placed inside the drawer and locked it.[8]

Also in the morning of December 20, 2001, respondent made several phone calls to her friends from whom she was requesting to borrow money.[9] She also asked Atty. Joy Reyala, a former officemate who twice paid their office a visit that day, first during merienda time in the afternoon and second around 5:00 p.m., if she could borrow money from her,[10] to which Atty. Reyala replied "Tingnan natin."

On December 20, 2001, around 5:30 p.m., complainant left the office ahead of respondent and Atty. Reyala, both of whom were to attend a party at the Pasay City Legal Office later that night.[11] In the meantime, Atty. Reyala left Justice Buzon's office and repaired to another building of the CA, leaving respondent in the mezzanine.[12]

After about an hour Atty. Reyala returned to the mezzanine following which she and respondent left for the party at Pasay.

On their way to the party, respondent asked Atty. Reyala if she knew someone selling second-hand cellular phones, she having intended to buy one for her daughter.[13]

Around 11:00 a.m. of the following day, December 21, 2001, respondent advised her officemates to get ready to leave for the lunch which Justice Buzon was hosting at the Holiday Inn. Complainant thereupon stepped out of the office and repaired to the comfort room, but as she observed that not all her officemates seemed to be ready to leave, she returned to the mezzanine where she saw respondent alone.

Around 2:30 p.m. also of December 21, 2001, the office staff returned from lunch upon which exchange of gifts took place, lasting up to 4:30 p.m.

Around 5:30 p.m., complainant, together with Atty. Clara Javier, also an officemate, left the office to attend the 6:00 p.m. mass at Ermita Church,[14] leaving the gifts she received and other stuff personal with the guard then manning the guardhouse at the CA main entrance.

After the mass, complainant, together with Atty. Javier, returned to the CA premises to pick up the stuff she had left at the guardhouse. She having remembered that she was to deposit Atty. Alado's money, and Atty. Javier having agreed to do the depositing on the 26th of December,[15] the two went up their office to get the monies from complainant's drawer.

When complainant opened her drawer, she discovered that the brown envelope containing Atty. Alado's money was missing.[16] She and Atty. Javier thus searched for the envelope until 10:00 p.m. but failed to find the same.[17]

As respondent reported only on January 7, 2002 (a Tuesday) following the holidays, complainant accused her of stealing the money.[18] To the accusation, respondent replied: "Bakit ako." After complainant had told her so many things, respondent replied: "Kung alam mo lang tuyong-tuyo ang Pasko namin. Wala akong pera, maawa ka."

Complainant thus filed the complaint at bar.

In her complaint-affidavit, complainant alleged, inter alia, as follows:

x x x

- That I believe my officemate, Gemiliana delos Angeles, took said envelope for the following reasons:
- It has been our practice in the Office to put money or other valuable items in our desk drawers and there was never an instance that anyone lost any of it, until she was assigned in the office;
- This was not the first time that I lost money inside my drawer since she became my officemate. In those incidents, she was left alone in the Office after office hours;
- It is common knowledge in our Office that she receives only an average of P500.00 more or less every pay day;
- On Thursday, December 20, 2001, she saw me counting the money of Atty. Alado, inserted the same in the logbook and placed it inside my drawer as I was talking to her and asking her as well as my other officemates about the benefits we have received so far;
- On the same day, she was in dire need of money for the long Christmas break. She called some of her friends

asking them for a loan and went in and out of our Office in desperate search of someone who can lend her money to no avail. She even mentioned to us that she did not have any money to buy an exchange gift for our Christmas party the next day;

- Earlier that day, Atty. Joy Reyala visited our Office. While we were having our merienda in the afternoon at around 3:30, she announced that she will borrow money from Atty. Joy Reyala and repeated the same to the latter right after office hours while we were still in the office;

- She was the only one who has the opportunity to get the money in the drawer on December 20, 2001 as she was left alone in the Office after office hours;

- In our common experience in the Office, she would reiterate to some of us her request for loan even though she is already indebted to almost everybody. Surprisingly the next day, December 21, 2001, she did not borrow money from any one in the Office;

- Knowing her predicament the day before, on December 21, 2001, we decided among ourselves to contribute cash as our Christmas gift for her; and

- She has difficulty settling her obligations as they fall due as I know of some people who demanded payment from her on several occasions immediately prior to the loss;

- That when I asked Atty. Joy Reyala whether Gemiliana delos Angeles was able to borrow money from her after we left the office on December 20, 2001, she informed me in the negative and that the latter no longer reiterated her request to borrow money when they were together later in the evening of that day nor the next day, December 21, 2001;

- That according to Atty. Reyala, when we left them (Atty. Joy Reyala and Gemiliana delos Angeles) in the Office on December 20, 2001, the former went downstairs to get her gifts leaving the latter alone in the Office for at least an hour;

- That Atty. Joy Reyala wondered why Ms. Delos Angeles did not anymore repeat her request for a loan that evening but instead asked the former if she knows anybody who is selling second hand cellphone and she wants to buy one for her with the price ranging from P2,000.00 to 3,000.00;

- That there was never an opportunity for my other officemates to get the money from my drawer since we were together the whole day;

- That when I confronted her on January 7, 2002, as she did not immediately report for work after the Holidays, she did not say anything to deny the accusations against her or defend herself but just look down until Ms. Gertrude Remolcacio and Ms. Claradel Javier arrived from the Library;

x x x (Underscoring supplied)

By Order[19] of February 12, 2002, then CA Presiding Justice Ma. Alicia Austria Martinez[20] designated Atty. Elisa B. Pilar-Longalong, CA Assistant Clerk of Court, to conduct an investigation on the complaint-affidavit and to submit a report and recommendation within thirty (30) days after the termination of the investigation.

On February 15, 2002, Atty. Longalong sent respondent the following memorandum:[21]

Enclosed are the complaint-affidavit dated January 9, 2002 of Ms. Josefina Fria and the affidavits of Atty. Ma. Claredel C. Javier, Ms. Gertrude M. Remolacio and Vilma Felix.

Within three days from receipt hereof, you are hereby required to explain in writing under oath, why you should not be held liable for misconduct for the loss of the amount of P16,150 from Ms. Josefina Frias' table drawer. In your answer, you may submit evidence. You are also required to manifest if you opt for a formal

investigation of the charge, in which case you are entitled to be assisted by a counsel of your choice.
(Underscoring supplied)

In her counter-affidavit[22] filed on February 18, 2002, respondent denied the charge against her. Regarding the fact that on December 21, 2001 she no longer pursued her request to borrow money the day before, respondent declared that on December 20, 2001, she received a letter[23] from her husband's sister Maria Roth from the USA "which was addressed to me but I knew it was for my husband as it has been customary that his sister-in-law sent money to him twice a year, once mostly on Christmas."

Respondent later requested, by motion dated February 17, 2002, for an extension of time to file further affidavits and supporting documentary evidence and manifested her desire for a formal investigation, which was granted by Order of February 19, 2002.

An investigation was thus conducted.

NBI POLYGRAPH EXAMINATION

In a related move, the NBI subjected respondent to polygraph examination, and while complainant was scheduled to also take the polygraph examination, she did not show up on the date rescheduled (on her request) for the purpose.

Polygraph Report No. 2002-111[24] states that respondent's polygrams "revealed that there were no specific reactions indicative of deception to pertinent questions relevant to instant investigation on th[e]s[e] questions," to wit:

Alam mo bang sigurado kung sino ang nagnakaw sa P10,650 sa drawer ni Ms. J. Fria? Hindi po

Ikaw ba mismo ang nagnakaw sa P10,650? Hindi po

Kasabwat o kaisplit ka ba sa pagnakaw sa P10,650? Hindi po

Nakinabang o nakaparte ka ba sa P10,650 na nanakaw sa drawer ni Ms. Fria? Hindi po

Alam mo ba kung nasaan kung kanino napunta ang nagnakaw na P10,650? Hindi po

May napunta ba sa iyo sa nanakaw na P10,650? Wala po

Mayroon ka bang actual na partisipasyon o kinalaman sa kasong ito? Wala po

DATE REPORTED: 6 March 2002 (Emphasis supplied)

COURT OF APPEALS REPORT AND RECOMMENDATION

In her October 2, 2002[25] Report to CA Presiding Justice Cancio C. Garcia, Atty. Longalong gave the following pertinent observations.

Although there was no eyewitness presented by complainant on the actual taking, several circumstances all point to respondent as the one who took the money from complainant's drawer. These circumstances are the proven fact that respondent was borrowing money from friends on December 20, 2001 but no one lent her; that she was in need of money at the time; that she was left alone in the office in the late afternoon of December 20, 2001 and in the morning of December 21, 2001, thus had the only opportunity to take the money and that she failed to deny taking the money when complainant confronted her of the loss. Hence, complainant has sufficiently established by substantial evidence that respondent took Atty. Alado's money. There being no countervailing evidence offered by respondent despite the opportunity and time to do so, her evidence

presented during the hearing but which were not formally offered in evidence can not be considered in her defense.

However, respondent can not be held liable for the administrative offense of grave misconduct because her offense was not committed in the exercise of her official functions. As held by the Supreme Court, misconduct must have direct relation to and be connected with the performance of official duty, which is not so in this case (Mariano v. Roxas, AM NO. CA-02-14-P, July 31, 2002; Apiag v. Cantero, 268 SCRA 47, 59). Hence, respondent may be held liable for conduct prejudicial to the best interest of the service.

Civil Service Commission Memorandum Circular No. 19, S. 1999 provides that the penalty for conduct prejudicial to the best interest of the service is Suspension from 6 months 1 day to 1 year for the 1st offense. Considering the mitigating circumstances that this is respondent's first offense and her length of service of 23 years, the penalty in its minimum period may be imposed on her.

In view of all the foregoing, Gemiliana delos Angeles may be held guilty of the administrative offense of conduct prejudicial to the best interest of the service. If this recommendation is approved and considering that the prescribed penalty for said offense exceeds 1 month suspension, the case may now be referred to the Supreme Court for appropriate action, pursuant to Circular No. 30-91 of the Office of the Court Administrator. (Underscoring supplied)

Presiding Justice Garcia, by letter[26] of October 22, 2002 to Chief Justice Hilario G. Davide, Jr., signifying his full accord with Atty. Longalong's Report and Recommendation, adopted them as his.

THIS COURT'S FINDINGS

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint.[27]

Rule 133, Section 5 of the Revised Rules on Evidence defines "substantial evidence" as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

The evidence complainant proffered in support of her complaint is clearly circumstantial.

Section 4, Rule 133 of the Revised Rules on Evidence provides for the requisites for circumstantial evidence to be considered sufficient, to wit:

Section 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inference are derived are proven; and
- (c)

The combination of all the circumstances is such as to prove conviction beyond reasonable doubt. (Italics in the original)

In the case at bar, complainant established two circumstances viz: 1) prior to the incident, respondent was in dire need of money; and 2) respondent was left alone in the office in the late afternoon of December 20, 2001, and was seen alone in the mezzanine between 11:00 a.m. and 12:00 noon of December 21, 2001.

For the third requisite to seal the circumstantial evidence against respondent, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the person being accused, to the exclusion of others, as the guilty person.[28]

Though administrative proceedings are not strictly bound by formal rules on evidence, the liberality of procedure in administrative actions is still subject to the limitations imposed by the fundamental requirement of due process,[29] especially if the charge, as in the case at bar, if found to be true, also warrants her indictment criminally.

The circumstances proven by complainant do not completely discount the possibility that, other than respondent, there could be another who could have stolen the money. As testified by complainant herself, the drawer of her table could be opened by a paperclip, the bread knife that lies around in the office, or any key, like that of an officemate's, that fits. Besides, aside from complainant and respondent, three officemates had a key to the main door. The possibility of others going inside the office at odd hours has not thus been ruled out.

Complainant's finding it improbable for anyone of her officemates to return to the office after everyone had left does not convince. "The improbable . . . is not always the untrue." "The most improbable things are sometimes true, and the most probable things do not happen." [30]

The fact is that complainant failed to prove that the only possible occasions that the money was stolen were the two instances that respondent was left or seen alone in the mezzanine.

Complainant thus failed to discharge the quantum of evidence – substantial evidence – to fault respondent. Her complaint must thus fail. This leaves it unnecessary to dwell on respondent's evidence. Suffice it to state that the result of the polygraph examination respondent took is in her favor, and her explanation why she no longer pressed for her request to borrow money from her friends and/or officemates is plausible.

WHEREFORE, the administrative complaint against respondent, Gemiliana de los Angeles, is hereby DISMISSED for insufficiency of evidence.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Rollo at 4-8.

[2] Transcript of Stenographic Notes (TSN), April 25, 2002 at 5.

[3] TSN, March 21, 2002 at 9.

[4] Rollo at 4-5; TSN, March 21, 2002 at 23.

[5] TSN, March 21, 2002 at 26.

[6] Id. at 27.

[7] Id. at 32-33.

[8] Id. at 35.

[9] TSN, April 25, 2002 at 28.

[10] TSN, June 6, 2002 at 16-17.

[11] Id. at 9.

[12] Id. at 26.

[13] Id. at 9-10.

[14] Id. at 40-42.

[15] Id. at 44-45.

[16] Id. at 47-48.

[17] Id. at 14.

[18] TSN, August 19, 2002 at 29.

[19] Id. at 1.

[20] Now Supreme Court Justice.

[21] Rollo at 16.

[22] Id. at 17-21.

[23] Id. at 60-61.

[24] Exhibit “3;” Rollo at 54.

[25] Rollo at 66-70.

[26] Id. at 65.

[27] Lorena v. Encomienda, 302 SCRA 632 (1999).

[28] People v. Canlas, 372 SCRA 401 (2001); People v. Ayola, 362 SCRA 451 (2001).

[29] Daracan v. Natividad, 341 SCRA 161, 176-177 (2000).

[30] II Vicente J. Francisco, Evidence, 464 (1997) citing Cooper v. Bockett, 4 Mo. P.C. 419, 439, per Knight Bruce, V.C. and Sydney v. Mutual L. Ins. Co., 22 Fed. Cas. No. 13, 154, per Cadwallader, Jr.

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