

CONCEPCION BOLIVAR, COMPLAINANT, VS. ABELARDO SIMBOL Y MANUEL, RESPONDENT.

Administrative Case No. 377. April 29, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Disbarment proceedings on moral grounds. This Court referred the case to the Solicitor General for investigation, report and recommendation. Complainant, the sole witness at said investigation, wound up her testimony on September 4, 1959. Then followed several postponements of hearing. The last was on August 4, 1960.

There is a vacuum in the record as to what happened thereafter. But on October 28, 1963, the Solicitor General filed his report stating, *inter alia*, that complainant made a sworn withdrawal and desistance. In view of the facts found, however, he recommended that respondent be disciplined, and simultaneously filed the corresponding complaint[1] asking for his suspension "for a period of at least five (5) years."

On October 31, 1963, the Clerk of this Court sent by registered mail to respondent, thru Atty. Valentino G. Castro, his counsel of record, a letter, with a copy of the foregoing complaint, requiring answer thereto in 15 days.

On November 27, 1963, Castro wrote this Court:

"In connection with the transmittal letter dated October 31, 1963, addressed to Mr. Abelardo Simbol, c/o the undersigned, * * * please be informed that since sometime in September or October, 1960, after Miss Concepcion Bolivar and Atty. Abelardo Simbol had executed a compromise agreement in Civil Case No. 01700 of the Juvenile & Domestic Relations Court, the undersigned ceased to hear from Atty. A. Simbol. Notwithstanding this, upon receiving your said letter of transmittal, I tried to set in touch with Atty. A. Simbol at 1877-A Tayuman Street, Tondo, Manila, which is the address appearing in my files. I was, however, informed that Atty. A. Simbol reportedly resides at 232 Maria Cristina Street, Dumaguete City.

It is therefore, respectfully requested that copy of the complaint filed by the Hon. Solicitor General against Atty. Abelardo Simbol in Adm. Case No. 377 be sent directly to said respondent at 232 Maria Cristina Street, Dumaguete City, * * *."

On December 6, 1963, a copy of the complaint was sent by registered mail direct to Simbol at 232 Maria Cristina St., Dumaguete City. It was returned to this Court with the notation on the envelope that said respondent was no longer in that city.

At the hearing set by this Court for February 3, 1964, Solicitor Sumilang V. Bernardo and Atty. Tomas Yumul for complainant appeared. They submitted the case for decision without oral argument. There was no appearance for respondent.

- The problem that at once projects itself is: Can we proceed further on the face of the facts that: first, there is no answer to the complaint of the Solicitor General; and, second, at the hearing before this Court neither respondent nor counsel appeared? The controlling statute, Section 30, Rule 138, Rules of Court, reads:

"SEC. 30. Attorney to be heard before removal or suspension.—No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*."

The pattern of behaviour pursued by respondent requires articulation. Complainant's testimony was completed on September 4, 1959. Then followed a series of postponements: November 13, 1959; January 15, 1960; February 24, 1960; April 4, 1960; May 9, 1960; July 1, 1960; August 4, 1960. In the interim, negotiations were had. Result—amicable settlement and complainant's withdrawal and desistance.

That respondent did not take the trouble to answer the Solicitor General's complaint is now unimportant. The directive for him to answer was first served on his lawyer. Then it was sent to him personally at his address in Dumaguete City; but the registered mail was unclaimed. Neither will he profit by non-appearance on the date of hearing before this Court (February 3, 1964). Because, notice of hearing was sent to him at both his Manila and Dumaguete addresses; and he did not bother to get it from the post-office. Even his two attorneys of record, who received said notice, did not appear before this Court.

Respondent knew that the disbarment proceedings were pending. His right to practice his profession was at stake. He could ill-afford to just stand by and wait. It was his duty to inquire as to his fate. He was hidebound by his obligation to inform this Court of his whereabouts, to the end that notices could reach him. In all these, he failed. On the face of the environmental facts, respondent gave this Court ample reason to believe that he purposely stayed away.

We, accordingly, hold that respondent has had full opportunity to defend himself, and that he has waived his right to be heard.

In a previous case^[2] this Court has had occasion to pass upon a similar question. There, respondent and counsel, after a series of non-appearances and postponements at their behest, failed to finally appear before the investigating fiscal in Pangasinan. The fiscal rendered the report on the merits finding respondent guilty of malpractice and recommending that disbarment charges be filed. The Solicitor General thereafter lodged a formal complaint before this Court. Notices sent by this Court directing respondent to answer were all returned because he could not be located at his given address, San Vicente, Alcala, Pangasinan. His attorney of record was also required to answer; instead, he asked that he be relieved as counsel for respondent. Counsel, however, appeared in oral argument. This Court there held:

"The respondent avoided attending the hearings conducted by the Provincial Fiscal of Pangasinan. Even in this Court, his whereabouts are totally unknown. His knowledge that a disbarment proceeding had been filed or pending against him imposes upon him the duty to make himself or his presence available to this Court for a fair trial. That he could not be located at his known address without making his whereabouts known implies that he had chosen to waive every right and opportunity to put up his defense."

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The next point that logically crops up is the weight to be accorded complainant's withdrawal and desistance, made long after her testimony in full had been taken down at the Solicitor General's office. Reasons given: first, they threshed out their differences, and, second, the irreconciliability of religious beliefs allegedly caused the marriage plans to miscarry. The first is correct. The second is at war with the proven facts. Religious differences never did mar the relations between the two. As the Solicitor General pointedly remarked, "It is unbelievable for a Filipino woman to refuse to marry a man she had lived with for 3 or 4 years trusting in the man's promise to marry on the

ground of irreconcilable religious belief", else she "would not have complained if this were so". Indeed, settlement of the case and the consequent withdrawal obviously were part of an overall plan calculated to purge respondent from mischief and to insulate him from disciplinary action. To conform to this arrangement is to wink at wrongdoing.

This Court had heretofore ruled^[3] that, "Any person may bring to this court's attention the misconduct of any lawyer, and action will usually be taken regardless of interest or lack of interest of the complainant, if the facts proven so warrant". The power to discipline lawyers—officers of court—may not be cut short by a compound of compromise and withdrawal of charges.^[4]

- The preliminaries out of the way, we now go to the core of the case. Here are the facts.^[5]

Concepcion Bolivar was 27 years old at the time she took the stand. Her schooling ended in sixth grade. She testified in Tagalog. She became acquainted with respondent in April, 1952. By December following, respondent started to court her. Convinced by his promise to marry, she accepted him in February, 1953. By April 7, 1953, the two lived as husband and wife. Respondent had been "telling his classmates" that she "was his wife". On April 22, 1957, they bore a child baptized Eduardo Bolivar Simbol.

Came November 12, 1957. The two separated. For, complainant learned from respondent's brother-in-law, one Turing Mendoza, and others, that respondent married another girl, Lydia Lingat. Complainant investigated. At the Iglesia ni Kristo and in the Local Civil Register of Angeles, Pampanga, her worst fears were confirmed. Respondent and Lydia Lingat were really married in Angeles on January 5, 1957.

When the two first met, respondent was a jobless first year law student. He remained jobless during his student days. Since June, 1953, complainant helped respondent in his studies, gave him money to buy his books and to pay his matriculation fees and for "other things he needed in his studies". At one point in her testimony complainant stated, "I had been working nights (ang gabi ay ginagawang araw) and even on Sundays and then afterwards he made me suffer all kinds of embarrassments and shame". Respondent became a member of the bar, and found work in a law office. Yet, she continued giving him money. She gave respondent a total of around P8,000.00.

All along, respondent fed complainant with assurances that he would marry her. To ward off celebration of marriage, respondent offered varied excuses. There was a time when they travelled to Angeles, Pampanga, ostensibly to get married. The marriage was put off, so respondent gave complainant to understand, because there was nobody to solemnize. And then, dangling a piece of paper, he told her that the license had already expired. In early 1954, respondent told complainant "to wait until he finished his studies", anyway, they were "practically husband and wife". Then he asked her to hold the marriage till after delivery, because "it was shameful to appear in church" when she was "on the family way". The child was born, Now, marriage became conditioned on his securing a job for he was ashamed as complainant "was spending for him". Came June of 1957.^[6] Respondent informed complainant that he secured a job as an assistant attorney in the Fernandez Law office and that he would start earning money. Never running out of explanations, this time it was: "cases take long to finish, but as soon as he earns thousands of pesos he was going to marry me". Again she agreed. When, on cross-examination, she was queried why she accepted all the excuses in spite of the birth of the child, she answered: * * * because he told me that now [that] we have a child I can no longer deceive you because the child is more than a mere marriage".

These avowals notwithstanding, respondent turned around and married another. Adding insult to injury, he concealed the fact of his marriage and continued to live with complainant for several more months until the latter discovered the bitter truth. Even then, respondent had the temerity to deny his marriage and to appease complainant with the palaver that "the woman was not his wife but the wife of his cousin".

In January of 1958, respondent kept asking complainant to live with him again because he was going to marry her and "leave his wife"; that he "did not really love the girl he married". He also asked for money. This met with rebuff. Respondent got angry and threatened her.

And now, to the appropriate action. We part with the premise that this Court has inherent jurisdiction to suspend or disbar an attorney for sufficient cause.[7] On this point, the Solicitor General aptly observed.[8]

"Undoubtedly, respondent's actuations in making a dupe of complainant, living on her bounty and allowing her to spend for his schooling and other personal necessities while dangling before her the mirage of a marriage, marrying another girl as soon as he had finished his studies, keeping his marriage a secret while continuing to demand money from complainant, and trying to sponge on her and persuade her to resume their broken relationship after the latter's discovery of his perfidy, are indicative of a character not worthy of a member of the bar. The fact that complainant has withdrawn her complaint against respondent does not wipe out the grievous offense he had committed, making complainant and her child with him virtual outcasts of society. This, respondent should not be allowed to do with impunity."

Respondent, we are persuaded to say, "has failed to maintain the highest degree of morality expected and required of a member of the bar".[9] He is, indeed, guilty of "grossly immoral conduct" within the meaning of Section 27, Rule 138, Rules of Court.[10]

In the light of the entire record, we vote to suspend respondent Abelardo Simbol y Manuel from the practice of law for a period of five (5) years.[11]

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, and Bengzon, J.P., JJ., concur.

[1] Pursuant to Section 5, Rule 139, Rules of Court.

[2] Agdoma et al., vs. Celestino, Administrative Case No. 289, November 29, 1962.

[3] Katalbas vs. Tupas, Administrative Case No. 328, April 30, 1959.

[4] In re Davies, 39 American Reports, 729, 731, where, in spite of the settlement had with the offended party, the Court declared: "It is contended on the part of the plaintiff in error that this settlement operated as an absolution and remission of his offense. This view of the case ignores the fact that the exercise of the power is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession. He had acted in clear disregard of his duty as an attorney at the bar, and without 'good fidelity' to his client. The public had rights which Mrs. Curtiss could not thus settle or destroy. The unworthy act had been fully consummated, * * *"

[5] Section 6 of Rule 139 provides: "SEC. 6. Evidence produced before Solicitor General available.—The evidence produced before the Solicitor General in his investigation may be considered by the Supreme Court- in the final decision of the case, If the respondent had an opportunity to object and cross-examine, * * *".

Here, complainant testified on direct examination and on lengthy cross-examination by respondent's counsel.

[6] At this time, respondent was already married to Lydia Lingat.

[7] VI Moran, Comments on the Rules of Court, 1963 ed., p. 236, citing: Ex parte Wall, 107 U.S. 265, 27 L. ed., 552; In re Robinson, 19 Wall, 505, 22 L. ed., 205.

[8] Report, pp. 6-7.

[9] Toledo vs. Toledo, Administrative Case No. 266, April 27, 1963, citing: Mortel vs. Aspiras, Administrative Case No. 145, December 28, 1956, and Sarmiento vs. Cui, Administrative Case No. 141, March 29, 1957.

[10] This ground was added to the original grounds for suspension or disbarment in Section 25, Rule 127 of the 1940 Rules of Court.

[11] Cf. Cabrera vs. Agustin, Administrative Case No. 225, September 30, 1959.

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