

PERLA PAO, ASSISTED BY HER MOTHER EMERENCIANA V. CUNANAN, COMPLAINANT, VS. JESUS S. SILO, RESPONDENT.*Adm. Case No. 794. April 30, 1973*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7e3382937d64/>**ANTONIO, J.:**

Respondent, a member of the Philippine Bar, is charged by complainant assisted by her mother, with grossly immoral conduct. The verified complaint recites that on the night of December 16, 1966, complainant Perla Pao who was then a young lass of seventeen years and single, was allowed by her mother Emerenciana Cunanan to go with Jose M. Sarte III, who was using the alias of "Joseph Schneider"; that they were going to attend a conference in connection with the forthcoming film production of the Regina Productions, Inc., entitled "The Pearl and the Sun" to be filmed in Japan, based on a script written by "Schneider," in which picture complainant was promised the role of a Japanese giri; that respondent was going with them upon his representation that he was working in the Japanese Embassy, and was going to prepare her passport for the trip to Japan; that relying on Sarte's and respondent's representations, she went with them in the car of Sarte and together with another girl, named Josie Galapin, they were taken instead to the Winston Motel, at Pasay City where both girls were sexually abused by Sarte and by the respondent; that the respondent forced her into one of the rooms and once inside said respondent taking advantage of his superior strength and by means of force and intimidation succeeded in having carnal knowledge of her. As a result thereof she became pregnant and gave birth to a baby boy on September 3, 1967 at the Cunanan Clinic, Quezon City.

In his answer, respondent denied the material averments of the complaint and claimed that the filing thereof was part of a malicious and well-planned scheme to extort money from him and Sarte, and attached to his answer several annexes, namely: a copy of the complainant's baptismal certificate showing that the complainant was born on February 5, 1948 (which would show that the complainant was 18 years, 10 months and 11 days old on December 16, 1966, and not 17 years old as alleged in the complaint); a certificate by the local civil registrar of Sta. Rita, Pampanga, attesting to the destruction by fire in 1951 of certain birth records including those of persons born on February 5, 1948; a xerox copy of the birth certificate of "Jesus Cunanan Pao" showing that said child was born on September 3, 1967 at the Simeon Cunanan Memorial Clinic, 137 Banaue, Quezon City, and was the legitimate child of Perla V. Cunanan and Jose B. Pao; an affidavit of Sarte denying that the complainant was ever abused by the respondent on December 16, 1966 or on any other date, and stating that it was in the first week of January, 1967, that he, the respondent, Josie Galapin and the complainant, were together, but they merely went to a movie house, and thereafter he accompanied the complainant and Josie Galapin to their respective houses; and an affidavit of Jose Galapin corroborating the contents of Sarte's sworn statement and denying that she and the complainant were ever raped by Sarte and the respondent, respectively.

In its resolution of January 16, 1968, this Court referred the case to the Solicitor General for investigation, report and recommendation.

What transpired at the investigation can be gathered from the Solicitor General's Report, the pertinent portion of which reads:

"This case was originally investigated by First Assistant Solicitor General Frine Asprer Zaballero on April 8, 1968. She continued hearing the case until June 23, 1969. The mother of the complainant, Emerenciana V. Cunanan, and complainant herself, Perla Pao, adduced their respective testimonies (a portion thereof with respect to the latter) before her. Thereafter, in view of the departure for abroad of said First Assistant Solicitor General, the investigation of this case was reassigned on May 26, 1970 to the undersigned Assistant Solicitor General who heard the continuation of the testimony on direct examination of Perla Pao and a portion of her testimony under cross examination by the opposing counsel.

"At the resumption of the investigation of this case scheduled for March 2, 1972, where Perla Pao was supposed to continue her testimony under cross examination, the respondent and his lawyer appeared, but neither the complainant nor her counsel made any appearance. However, complainant's mother, Emerenciana V. Cunanan, appeared and presented an Affidavit of Desistance purportedly signed by her daughter, complainant herein, Perla Pao, and to which the mother (Emerenciana Cunanan) had also affixed her signature, to the effect that the filing of the complaint was due to some mistake and stemmed from her inadequate knowledge of legal matters and English; that she does not wish to prosecute the respondent; that all her statements before 'this Honorable Court, before the City Fiscal, before the Solicitor General' were all erroneous, and that she has never been raped by the respondent. Emerenciana Cunanan further volunteered the information that her daughter is now happily married to one Roberto Poblete of Davao City where the couple are presently residing.

"In view of the failure of the complainant, Perla Pao, and her lawyer to appear, coupled with the filing of her Affidavit of Desistance by her mother, Emerenciana Cunanan, the hearing of the case was reset to March 15, 1972 at 2:30 o'clock in the afternoon to afford the complainant and/or her lawyer the opportunity to ventilate their views on the matter. However, at the hearing set for March 15, 1972, complainant and her lawyer again failed to appear although respondent and his lawyer presented themselves.

"On October 19, 1972, the undersigned once more scheduled the hearing of this case for November 6 and 7, 1972 at 2:00 o'clock in the afternoon, but at the instance of counsel for the appellant on the ground that he had hearings previously set on said dates, the investigation of this case was reset for December 1 and 5, 1972 at 2:30 P.M. In the meantime, the undersigned received a letter from the widow of complainant's former counsel, Atty. L.T. Castillo, with the information that the latter died on October 30, 1972.

"This case was called for investigation on December 1, 1972 at 2:30 o'clock in the afternoon as scheduled and respondent and his counsel came, but because of the failure of the complainant to appear, it was only at 3:00 o'clock that same afternoon that the undersigned Assistant Solicitor General decided to hear respondent's counsel in the absence of the complainant. Counsel for the respondent, Atty. Guevarra, moved that the direct testimony of Perla Pao be stricken from the record on the ground that he has not cross-examined her sufficiently, and that if the same is granted, that he be allowed to present evidence in behalf of the respondent. Said motion was granted conditionally, subject to further verification from the record as to how far counsel for the respondent cross-examined the complainant.

"For his Exhibit 1 respondent presented a certified true copy of the joint decision handed down by the Honorable Francisco de la Rosa, Judge of the Court of First Instance of Rizal, Branch VII, Pasay City dismissing the criminal cases for rape, docketed as Nos. 7893-P and 7894-P and entitled People of the Philippines vs. Jose Ma. Sarte, etc. and People of the Philippines vs. Jesus S. Silo, respectively. The receipt issued in payment for said certified true copy of the decision was marked as Exhibit 1-A. Thereafter the respondent was placed on the witness stand. His testimony was limited to the identification of his Answer to the Complaint and the verification thereof which are found in the record of the case and which were marked as Exhibits 2 and 2-A, respectively. Counsel formally presented forthwith said exhibits and rested his case."

The Solicitor General granted the respondent's motion to strike from the record the complainant's testimony in view of the inability of the respondent's counsel to continue with his cross-examination by reason of the complainant's failure to appear during the continuation of the investigation.

In the premises, the Solicitor General recommends the dismissal of the case and the respondent's exoneration.

The fact that the complainant has filed, thru her mother, an affidavit of desistance, is of course not of decisive import. A case of suspension or disbarment may proceed "regardless of interest or lack of interest of the complainants, if the facts proven so warrant," for "[w]hat matters is whether, on the basis of the facts; borne out by the record, the charge of deceit and grossly immoral conduct has been duly proved."^[1] The complainant's election to desist notwithstanding, this Court has therefore to determine on the basis of the record whether the charges against respondent lawyer have been convincingly proved.

The striking from the record of the complainant's testimony in chief because of her repeated failure to appear in the investigation, appears warranted by the fact that due to her refusal to appear, respondent was not able to cross-examine her on matters in relation to the annexes attached to respondent's answer to the complaint which documents tend to discredit the factual basis of the charges. The only evidence left for the complainant is therefore her mother's testimony, but the same, standing alone, does not suffice to support the charges. What would have been crucial, in view of the nature of the charges against the respondent, is the testimony of the complainant herself, but, as already said, the same is unavailing.

It results that the charges against the respondent have not been clearly established, for the power to disbar attorneys ought always to be exercised with great caution, and should follow only where there is a clear preponderance of evidence against the respondent. For the presumption is, until overthrown by convincing proof -that an attorney is innocent of the charges against him and has performed his duty as an officer of the court in conformity with his oath.^[2]

WHEREFORE, the present complaint is dismissed, and the respondent exonerated of the charges. Let a copy of this resolution be filed with Atty. Jesus S. Silo's record in the Roll of Attorneys.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

[1] Go vs. Candoy, Adm. Case No. 736, October 23, 1967, 21 SCRA 439, 442.

[2] Magno, et al. vs. Gellada, Adm. Case No. 767, Dec. 20, 1971, 42 SCRA 549.

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