

THE PHILIPPINE TRIAL LAWYERS ASSOCIATION, INC., COMPLAINANT, VS. HUMBERTO B. BASCO, RESPONDENT.

A.M. No. P-2364. October 27, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The Philippine Trial Lawyers Association, Inc. charged deputy sheriff Humberto Basco of the Office of the City Sheriff of Manila for (1) inefficiency and incompetence in the performance of official duties; and (2) gross misconduct.

Executive Judge Antonio Padua Paredes of the City Court of Manila, to whom this case was referred for investigation, submitted the following report and recommendation dated July 24, 1980:

"On August 14, 1978, Atty. Procopio S. Beltran, Jr., who is the President of the complainant Philippine Trial Lawyers Association, Inc., filed a case docketed as Civil Case No. 036555-CV, entitled 'Singer Sewing Machine Co. Inc. versus Rosauro Cabrera,' which was assigned to Branch XII of the City Court of Manila.

"On August 25, 1978, summons was issued to defendant Rosauro Cabrera with address at 'PCSO (Philippine Charity Sweepstakes Office), Fund Allocation Department, San Marcelino St., Ermita, Manila' and assigned for service to respondent Humberto Basco, Deputy Sheriff of the Office of the City Sheriff of Manila (Exhibit 'A').

"On September 12, 1978, respondent deputy sheriff made a return to the City Court of Manila, Branch XII to the effect that 'Summons have not been served because defendant Rosauro Cabrera being always out therefrom' (Exhibit 'A-1').

"On March 29, 1979, Atty. Beltran, Jr., filed an 'Ex-Parte Motion for the Issuance of an Alias Summons and to Handcarry the Same' before the presiding Judge of Branch XII who granted the same on May 17, 1979 (Exhibits 'B' and 'B-1').

"On May 29, 1979, Atty. Beltran, Jr. was able to serve by substituted service the alias Summons together with copies of the Complaint and Annexes to Rosauro Cabrera through Miss Araceli del Rosario who is the immediate superior of Rosauro Cabrera and Personnel in-charge of the Philippine Charity Sweepstakes Office, Fund Allocation Department, San Marcelino St., Ermita, Manila (Exhibit 'C').

"On June 6, 1979, Atty. Beltran, Jr. rendered a verified return of service of alias summons to Branch XII, alleging, among other things, that he has 'actually served a copy of the alias Summons together with the Complaint and the Annexes thereof to Miss Araceli del Rosario located at the Philippine Charity Sweepstakes Office, Fund Allocation Department, San Marcelino Street, Ermita, Manila.'

"The above facts were established by the testimonies of Atty. Procopio Beltran, Jr. and Anita Soriano, clerk-in-charge of civil cases of Branch XII.

"Complainant would like to stress the fact that the delay in the service of summons to the defendant Rosauro Cabrera was due to the 'inefficiency and incompetence in the performance of his (respondent) official duties,'

which is tantamount to 'gross misconduct,' and that it delayed the administration of justice in said civil case without legal justification causing to plaintiff Singer Sewing Machine Co. Inc. damage and injury.

"Respondent Humberto Basco does not dispute in substance, complainant's evidence. He, however, disclaims any responsibility for his failure to serve the summons to Rosauro Cabrera, reiterating the explanation he incorporated in his answer to the Complaint dated March 11, 1980, which is herein reproduced:

'In regard the complaint of the Philippine Trial Lawyers Association, Inc. dated May 28, 1979, filed thru J. Gonzales-Orense, particularly referring to the complained act stated in paragraph 6 thereof, I hereby manifest the following explanation/comment:

'1. The subject summons issued in Civil Case No. 036555, City Court of Manila, entitled "Singer Sewing Machine vs. Rosauro Cabrera" was one of the many court processes referred to the undersigned for service on September, 1978;

'2. Neither the parties therein, were known to me, personally or otherwise;

'3. In the normal course of my function, I served said summons at the indicated address, which place is an indistinguishable dependency or extension serving as bodega, of the Philippine Charity Sweepstakes Office at San Marcelino, Manila;

'4. In several attempts to serve the subject summons, the named defendant, was always out therefrom, the premises being always closed, and no person of sufficient discretion could be served with the process for and in behalf of the defendant;

'5. I inquired for the whereabouts of the defendant, but none could give me the information I needed;

'6. I returned the summons with the information "That the summons could not be served to defendant Cabrera for the reason that he was always out, because in fact and indeed, said party was always out therefrom;

'7. My service and return of the summons was effected impersonally, impartially and ministerially and without intent to prejudice the complaining plaintiff because I did not know or was familiar with the whereabouts or circumstances of the defendant. Under the obtaining situation, I had to return the summons in the manner stated because substituted service could not, likewise, be effected thereon.'

xx xx xx

"The only question posed for the undersigned investigator to resolve in this case is whether or not the failure of the respondent Humberto Basco to serve the summons to the defendant Rosauro Cabrera by means of substituted service in accordance with the Rules of Court which provides:

"Substituted Service: If the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected, a) by leaving copies of the summons at the defendant's dwelling house or residence with some persons of suitable age and discretion then residing therein, or b) by leaving the copies of the summons in the defendant's office or regular place of business with some competent person in charge thereof.'

constitutes 'inefficiency and incompetence in the performance of official duties and gross misconduct.'

"The aforecited Rule explicitly makes it the duty of respondent Deputy Sheriff to leave copies of the summons at the defendant's office or regular place of business with some competent person in charge thereof.

"Respondent's pretension that he tried to serve the summons thrice to the defendant Rosauro Cabrera but the latter was always out; that defendant's officemates were not cooperative, and that he preferred to use his discretion in not availing of the rule on substituted service, is not a defense that would relieve him of responsibility.

"His discretion in not availing of said rule on substituted service promulgated by the Supreme Court is a sign of disrespect and arrogance. What to him was his discretion is in truth and in fact an indiscretion. The respondent acted clearly not within the ambit of discretion allowed him by the Rules" (pp. 11-16, Judge Paredes' Report).

The investigating Judge finds the respondent deputy sheriff "to have committed gross negligence in the performance of his official duties as deputy sheriff of Manila, which negligence not only has delayed the speedy administration of justice, but more importantly has impaired public confidence in the administration of justice."

The Investigating Judge recommended that respondent be suspended from office for two (2) months without pay, with a warning that a repetition of the same or similar act will be dealt with more severely.

WE have gone over the records and We are satisfied that the findings and recommendations of the Investigating Judge are amply supported by the evidence.

Indeed, respondent's pretension that he could not serve the summons because the defendant was always out; that defendant's officemates were not cooperative, is too naive to be worthy of belief.

Furthermore, respondent's claim that he could not make a substituted service since there was no person of sufficient discretion in defendant's place of work, is belied by the fact that Atty. Beltran was able to serve by substituted service the alias Summons -- after Atty. Beltran's motion for the issuance of an alias summons and to handcarry the same was granted by the court -- together with the copies of the complaint and annexes to defendant Rosauo Cabrera through Miss Araceli del Rosario who is the immediate superior of the defendant at the PCSO.

Being one of those in the forefront of our judicial system, whose official duties involve as it does the orderly administration of justice, respondent deputy sheriff, in his future actuations, would do well with the reminder that "it is a fundamental and a sacred mandate indispensable to the greatness of the State and of our Society that public officers and employees serve with the highest sense of responsibility and the highest degree of integrity, loyalty and efficiency, and at all times remain accountable to the people and their conscience" (A.M. No. P-443, July 31, 1975, In the Matter of Appeal of former deputy sheriff Apolinar G. Flores).

WHEREFORE, RESPONDENT DEPUTY SHERIFF HUMBERTO B. BASCO IS HEREBY FOUND GUILTY OF SERIOUS MISCONDUCT IN OFFICE AND IS HEREBY ORDERED TO PAY A FINE EQUIVALENT TO TWO MONTHS SALARY, WITH A WARNING THAT A REPETITION OF THE SAME OR ANALOGOUS ACT WILL BE DEALT WITH MORE SEVERELY.

LET A COPY OF THIS DECISION BE ENTERED IN RESPONDENT'S PERSONAL RECORD.

SO ORDERED.

Teehankee, Acting C.J., Fernandez, Guerrero, De Castro,[*] and Melencio-Herrera, JJ., concur.

[*] Mr. Justice de Castro was designated to sit with the First Division.

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