

DORIS R. RADAZA, COMPLAINANT, VS. ROBERTO T. TEJANO, RESPONDENT.

Adm. Case No. 1377. July 31, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Disbarment case on the ground of immorality, respondent having had sexual intercourse with complainant resulting in her giving birth to a child, whom respondent readily recognized, both complainant and he being free to marry, she being about 30 years of age and he 28. Subsequently, however, respondent married complainant's cousin, whom complainant knew respondent had been courting. Hereunder is the report and recommendation of the Solicitor General to whom the case was referred for investigation:

"Complainant Doris R. Radaza's testimony as well as the documentary evidence she presented tend to show that she and respondent were sweethearts (tsn. May 20, 1975; Exh. 'G' to 'AAAA', Folder of Exhibits, pp. 11-116). This started when they met at respondent's residence in Cabadbaran, Agusan del Norte during its town fiesta on February 1, 1973 (tsn. *ibid*, p. 24). Respondent began courting complainant on February 10, 1973. (tsn. pp. 25, 27, 30).

"Complainant was then single, 30 years old and a physical education teacher at the Butuan City Central Elementary School, while respondent was also single, 28 years old, and the private secretary to the Mayor of Butuan City.

"On February 24, 1973 complainant accepted respondent's love (tsn *id*, p. 26), and thus marked the beginning of their intimate relationship. On March 11, 1973, complainant and respondent had their first sexual intercourse at the latter's boarding house. (tsn. pp. 29-30, 82-85). On several occasions after that, complainant visited respondent at the same boarding house, and there they savored the sweetness of connubial bliss. As a consequence, complainant became pregnant, and on December 16, 1973, she delivered a baby-boy. Respondent readily acknowledged being the father of the baby whom he named after him (tsn. *ibid*, pp. 29-32). Respondent paid the medical and hospital expenses of complainant (Exhs. 'D' & 'E', Folder of Exhibits, pp. 8-9), and supported the baby financially.

"But, all the while that complainant and respondent were having their relationship, respondent was also engaged to one Florminda Buque, complainant's cousin. This relationship was known to complainant. In fact, complainant, at one time (May 1973) confronted Florminda Buque, and told the latter to put an end to her relationship with respondent, otherwise, complainant 'will never stop running after them no matter how even if she will lose in the case.' Complainant further threatened Florminda with injuries the 'moment she would meet her any place.' (tsn September 6, 1975, p. 14). On September 21, 1974, respondent married Florminda Buque. Hence, this complaint for disbarment.

"I S S U E

The only issue raised to the instant case is:

"WHETHER OR NOT THE SEXUAL RELATIONS BETWEEN COMPLAINANT AND RESPONDENT, BOTH UNMARRIED AT THE TIME, RESULTING IN HER PREGNANCY AND SUBSEQUENT DELIVERY, AND THE MARRIAGE OF RESPONDENT TO ANOTHER WOMAN CONSTITUTE GROSS IMMORAL CONDUCT AS TO WARRANT DISBARMENT OR DISCIPLINARY ACTION AGAINST RESPONDENT AS A MEMBER OF THE BAR.

"D I S C U S S I O N

"Complainant contends in her testimony that she accepted respondent's love and submitted to his importunings to have sexual relations due to the latter's promise to marry her. On the other hand, respondent, while not denying their intimate relationship, disclaimed having promised to marry her, and alleged that their sexual intimacies were motivated by their mutual attraction and desire for each other.

"After a judicious assessment of the evidence on record, we find for the respondent. This Honorable Court, in *Soberano v. Villanueva*, 6 SCRA 811, 895, ruled that:

'Intimacy between a man and a woman who are not married x x x is neither so corrupt as to constitute a criminal act nor so unprincipled as to warrant disbarment or disciplinary action against the man as a member of the Bar.'

"In the case at bar, respondent denied having promised marriage to complainant. In fact, complainant knew before hand that respondent was also engaged to her cousin, Florminda Buque, whom he eventually married. Besides, even if marriage had entered into the plans of complainant and respondent, we could not believe that the various occasions in which the parties engaged in sexual relations were prompted solely by the expectancy on her part that before long the marital knot would be tied. At that time, complainant was already 30 years old and a public school teacher while respondent was 28 years old and a private secretary to the City Mayor. Thus, complainant was mature enough to realize the folly of her acts. She could not have been so naive as to be deceived by such promise. As aptly observed by this Honorable Court in *Montana v. Ruado*, 62 SCRA 382, which facts are similar to those of the case at bar, thus:

'x x x They were both mature, no longer in the first blush of youth, impelled to act thus because of the strong physical attraction that each had for the other and the force of a deeply rooted desire too difficult to resist.'

"The evidence discloses that complainant voluntarily yielded to the respondent, and that whatever 'injury thus inflicted to the good name and reputation of complainant x x x arose from the frailty of flesh, the sociologist MacIver referring to it as so powerful an appetite, 'an imperative of life closely associated with the recklessness and the caprice of desire.' ' (*Montana v. Ruado*, supra, pp. 385-386, citing *Barba v. Pedro*, Administrative Case No. 545-SBC, Dec. 26, 1974). It may well be pointed out also that the boarding house of respondent had always been the mute witness to the sexual encounters between complainant and respondent. On March 11, 1973, the time that they had their first sexual encounter, complainant went voluntarily to respondent's boarding house (tsn. May 22, 1975, p. 38). She testified, thus:

"ATTY. FAMADOR:

"Q. x x x When you arrived in the house of the Egpalinas which you said is about 3 to 4 o'clock in the afternoon, am I right? x x x

"A. 2 to 3 o'clock.

"Q. Now, you did not stay in the sala of the residence of the Egpalinas when arrived?

"A. I stayed in the sala but I was met by respondent Tejano.

"Q. And then what happened, you went inside the bedroom of respondent Atty. Tejano, am I right?

"A. Yes, Sir.

x x x

"Q. So after you agreed you went inside the bedroom, the two of you, am I right?

"A. After he pulled me, sure we already went inside the room.

x x x

"Q. Now, did you shout when he forced you or you just keep quiet?

"A. No.

"Q. What did you mean no?

"A. It's my answer no.

"Q. You did not shout? x x x

"A. No sir.

x x x

"Q. You did not shout?

"A. I did not shout, Your Honor.

"Q. Alright, you did not resist also?

"A. No sir.

(tsn. , May 22, 1975, pp. 40-42)

'Undoubtedly, the cohabitation of respondent with petitioner is immoral for lack of a valid marriage. But to be the basis of a disciplinary action, the act must not merely be immoral; it must be 'grossly immoral' - 'it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.' (Section 27, Rule 138, New Rules of Court; Soberano vs. Villanueva, 6 SCRA 893, 895; Mortel vs. Aspiras, December 28, 1956, 100 Phil. 587, 591-593; Royong vs. Oblena, April 30, 1963, 7 SCRA 869-870; Bolivar vs. Simbol, April 29, 1966, 16 SCRA 623, 630; and Quingwa vs. Puno, February 28, 1967, 19 SCRA 439-440, 444-445). And the same must be established by clear and convincing proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power (Co. vs. Candoy, October 23, 1967, 21 SCRA 439, 442). Likewise, the dubious character of the act done as well as the motivation thereof must be clearly demonstrated (Co. vs. Candoy, supra). The evidence adduced by petitioner lacks the quantity and quality required by the foregoing criteria.

'All told, because of petitioner's active and voluntary participation in her illicit relationship with respondent, the latter's act are not grossly immoral nor highly reprehensible.' (Wong v. Reyes, 63 SCRA 667).

"In the case of Abaigar vs. David Paz, 93 SCRA 91, this Honorable Court exonerated respondent, a married man, who had an immoral affair, also with a married woman, but done under discreet circumstances. Thus, this Court said:

'From all indications, there is little room for doubt that she filed this disbarment case not in redress of a wrong, for there was no wrong committed. It was a voluntary act of indiscretion between two consenting adults who were fully aware of the consequence of their deed and for which they were responsible only to their own private consciences.'

"RECOMMENDATION"

"PREMISES CONSIDERED, it is respectfully recommended that the instant complaint for disbarment against Atty. Roberto T. Tejano, be dismissed, with a stern warning, however, that a repetition of the same offense will be dealt with more severely by this Honorable Court. It must likewise be impressed on him that he should comply with the moral and legal obligations incumbent upon him as the father of the child born out of wedlock, the result of his relationship with Miss Doris R. Radaza.

"Manila, April 29, 1981."

We have reviewed the record and We find the foregoing report sufficiently borne thereby. While We hold that respondent's conduct complained of does not warrant drastic disciplinary sanction, this is far from saying that it conforms with the highest standard of morality and propriety or decorum that every lawyer is expected to maintain. More than an ordinary individual, a lawyer "must, in the exercise of his rights and the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." (Article 19, Civil Code)

Accordingly, the instant complaint against respondent is hereby DISMISSED, but he is sternly admonished that any other misconduct on his part which might reflect unfavorably on the moral norms of the profession will be dealt with accordingly.

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

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