

**CONG. MANUEL N. MAMBA, M.D. ATTY, FRANCISCO N. MAMBA, JR.,
HON. GUILLERMO SUMIGAD, HON. CALIXTO GENOVEZA, HON.
MARTIN SORIANO, HON. LOURDES FAUSTO, HON. LORENZO FERMIN,
HON. ADO...**

A.M. No. MTJ-96-1110. June 25, 2001

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PER CURIAM:

This is a “resolution,” which is more accurately a manifesto or a petition of concerned citizens of Tuao, Cagayan, denouncing certain acts of Judge Dominador L. Garcia, Municipal Trial Court, Tuao, Cagayan, in connection with his handling of Criminal Case No. 399, entitled “People vs. Renato Bulatao.” The complainants are then Representative of the Third District of Cagayan, the mayor and vice–mayor, ten (10) members of the Sangguniang Bayan, thirty-two (32) barrio captains, ten (10) LGU department heads of Tuao, Cagayan, and eight (8) heads of non-governmental organizations or NGOs in the municipality of Tuao.

The “resolution,” dated November 4, 1996, was presented to this Court. It was adopted at an assembly led by Rep. Manuel N. Mamba which picketed the municipal trial court on that day.[1] The “resolution” was treated as an administrative complaint and respondent Judge Dominador L. Garcia was required to answer. The matter was referred to Executive Judge Orlando D. Beltran, Jr. of the Regional Trial Court of Tuao, Cagayan, for investigation, report, and recommendation.[2]

Thereafter, an investigation was held during which the affidavits and sworn statements of NBI Special Investigator Ablezer Rivera, the joint affidavit of NBI agents, Raul A. Ancheta and Paul D. Rivera, the sworn statement of the accused in Criminal Case No. 699, Renato Bulatao, and the testimonies of Abner P. Cardenas, clerk of court, MTC, Tuao, Cagayan and Tomas Latauan, Jr., interpreter of the same court, were presented. The gist of the evidence for the complainants is as follows:

On August 23, 1996, a complaint for violation of Presidential Decree No.1866 (illegal possession of firearms) was filed against a certain Renato Bulatao by the Cagayan Provincial Police Command before the sala of respondent Judge Dominador L. Garcia of the Municipal Trial Court, Tuao, Cagayan.[3] Respondent set the preliminary investigation on September 4, 1996, but the same was subsequently postponed and reset to October 23, 1996 as respondent was not present, although the complaining officer, P/Sr. Inspector Danny F. Salvador, appeared in court. On October 23, 1996, the preliminary investigation was again reset to October 30, 1996. On October 29, 1996, the accused, Renato Bulatao, complained to the NBI that at the scheduled preliminary investigation on September 4, 1996, P/Sr. Inspector Salvador demanded P30,000.00 from him in consideration of the withdrawal of the criminal case against him. According to Bulatao, the demand was reiterated by Salvador and respondent judge on October 23, 1996. As Bulatao told them that he could not afford it, the amount was reduced to P6,000.00.

Based on Bulatao’s report, the NBI set out to entrap Salvador and respondent judge. The NBI gave Bulatao 12 pieces of P500.00 marked bills amounting to P6,000.00, which the latter would give to Salvador and respondent

the next day.[4]

Accordingly, at about 7 o'clock in the morning of the following day, October 30, Bulatao met the NBI operatives in the house of Francisco Mamba, Sr., former representative of the 3rd District of Cagayan, where the entrapment was planned. Bulatao was given a tape recorder to record his conversation with whoever will receive the money. At 9 a.m., Bulatao went to the Municipal Trial Court and waited for his case to be called. At 10:30 a.m., respondent went out of his chambers and talked to SPO2 Jonathan Santos and SPO4 Carlos Poli, representatives of P/Sr. Inspector Salvador in the preliminary investigation. Respondent then called Bulatao and led him and the two police officers to the office of the MTC court personnel. Inside, respondent asked Bulatao if he had the money with him. When he answered in the affirmative, respondent took them to his chambers and left them there as he proceeded to his sala. After handing the money to the police officers, Bulatao went out of respondent's chambers. Upon his signal, the NBI operatives waiting outside respondent's court then rushed to the judge's chambers and arrested the two police officers after recovering 11 pieces of P500.00 marked bills in their possession.[5]

After the matter was referred by this Court to Executive Judge Orlando Beltran for investigation, the latter scheduled several hearings for the reception of evidence for the respondent. The records show that hearings were set on different dates (December 10, 1997, January 30, 1998, February 10, 1998, March 3, 1998, March 10, 1998, September 10, 1998, October 9, 1998, November 11, 1998, January 5, 1999, February 9, 1999, March 4, 1999, and April 5, 1999), but respondent did not appear despite due notice. Accordingly, he was deemed to have waived the right to present evidence and the case was submitted for decision. Hence only his counter-affidavit was considered, in which respondent claimed that it was Bulatao who asked permission to talk to the two police officers. He denied that he took the three to his chambers.[6]

On the basis of these facts, the Investigating Judge made the following recommendation:

"The foregoing facts indisputably show that the respondent Judge allowed the use of his chambers by the two (2) police officers SPOII Jonathan Santos and SPOIV Carlos Poli and Renato Bulatao, the accused in the criminal case for illegal possession of firearms, so that they could talk about the "settlement" of Bulatao's case which was then pending preliminary investigation by the respondent Judge. Although the two (2) witnesses, Abner Cardenas and Tomas Latauan, Jr., claimed that they did not hear the subject of the conversation between Bulatao, on one hand, and the two (2) policemen and the respondent Judge Dominador L. Garcia, on the other, before the three first-named persons went inside the chambers of the respondent Judge, it is not difficult to conclude that they must have talked about the criminal case of Bulatao and its "settlement." For if the subject-matter of their conversation were other than said "settlement" there appears no reason or purpose to allow the policemen and the accused to go inside the judge's chambers and there to continue their conversation. Simply stated, the respondent judge allowed the two (2) policemen and the accused Renato Bulatao to use his chambers so that they could consummate the arrangements for the dismissal of the case, particularly the payment of the sum of money being demanded as consideration for such dismissal.

"In this connection, the undersigned Investigating Judge cannot help but refer to the taped conversation between the two (2) policemen and Renato Bulatao inside the chamber of the respondent Judge. A portion of the translated dialogue between Poli and Bulatao, which was in Ilocano, tends to show that the P6,000.00 pay-off handed by Bulatao to the policemen was not intended for the respondent Judge but solely for the policemen and their superior, P/Sr. Inspector Salvador. However, it is not easy to disregard the implication obvious from the said conversation that the respondent Judge was privy to the entire transaction. SPOIV Poli pointedly told Bulatao "to take care of the Judge" which implies that the Judge knew of the pay-off being made and was willing to abide by the "deal" provided he would be "taken care of" by Bulatao.

"Such acts of the respondent Judge are improper, to say the least. He, therefore, violated the duty of every

Judge to uphold the integrity of the judiciary and to avoid impropriety and the appearance of impropriety in all activities. (Mortel vs. Leido, Jr. 44 SCAD 567). It cannot be over-emphasized that a judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of official duties but also in his every day life, should be beyond reproach. (Marcos, Sr. vs. Arcangel, 72 SCAD 1). Canon 2 of the Code of Judicial Conduct enjoins judges to avoid not just impropriety in their conduct but even the mere appearance of impropriety. This is true not only in the performance of their official duties but in all their activities, including their private life. They must conduct themselves in such a manner that they give no ground for reproach. (Pedro San Juan vs. Judge Lore V. Bagalsera, RTC, BR. 23, Naga City, A. M. No. RTJ-97-1395, December 22, 1997). In this case, the acts of the respondent judge were clearly improper as he facilitated, if not participated in, the obviously unauthorized/illegal transaction between the two (2) police officers and the accused Renato Bulatao for the settlement/dismissal of the latter's criminal case, in consideration of a sum of money, particularly since the offense charged against Bulatao is a grievous one and that it is one which is not allowed by law to be compromised.

"In view of all the foregoing, the undersigned Investigating Judge respectfully recommends that the respondent Judge Dominador L. Garcia be found guilty of improper conduct and be punished accordingly.[7]"

The Investigating Judge's reliance on the tape-recorded conversation between Bulatao and the two police officers is erroneous. The recording of private conversations without the consent of the parties contravenes the provisions of Rep. Act. No. 4200, otherwise known as the Anti-Wire Tapping Law, and renders the same inadmissible in evidence in any proceeding.[8] The law covers even those recorded by persons privy to the private communications, as in this case.[9] Thus, the contents of the tape recorder cannot be relied upon to determine the culpability of respondent judge.

In all other respects, however, the findings of the Investigating Judge are in accordance with the evidence. We hold, however, that respondent judge is guilty not just of improper conduct but of serious misconduct. Serious misconduct is such conduct which affects a public officer's performance of his duties as such officer and not only that which affects his character as a private individual. For serious misconduct to warrant a dismissal from the service, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law. It must (1) be serious, important, weighty, momentary, and not trifling; (2) imply wrongful intention and not mere error of judgment; and (3) have a direct relation to and be connected with the performance of his official duties.[10]

In the case at bar, it is clear that the crime of bribery was committed. Although the evidence may not be sufficient to support a conviction in a criminal case, it is adequate for the purpose of these proceedings. The standards of integrity required of members of the Bench are not satisfied by conduct which merely allows one to escape the penalties of the criminal law.[11] In an administrative proceeding, such as this case, only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, is required.[12]

To constitute bribery, the following must be shown: (1) the offender is a public officer within the scope of Art. 203; (2) the offender accepts an offer or a promise or receives a gift or present by himself or through another; (3) such offer or promise is accepted, or gift received by the public officer, (a) with a view to committing some crime; (b) in consideration of the execution of an act which does not constitute a crime, but which is unjust; or (c) to refrain from doing something which it is his official duty to do; and (4) the act which he agrees to perform is connected with the performance of his official duties.[13] From the records, it is evident that P/Sr. Inspector Salvador, a public officer, solicited money from Bulatao in consideration of the withdrawal of the case against the latter. The former categorically told the latter that he would withdraw the criminal case against Bulatao if Bulatao gives him P30,000.00, which was later lowered to P6,000.00. The fact that two of his men came for the

preliminary investigation and, without hesitation, followed respondent judge to his chambers after hearing that Bulatao had the money, bears out Bulatao's allegations. Although these circumstances do not show conclusively that respondent judge was privy to the crime of bribery, there is substantial evidence showing that he was at least an accomplice to the crime who cooperated in the execution of the offense by previous or simultaneous acts.[14] The following circumstances, as corroborated by the report of the NBI and the testimonies of two employees of the MTC, who were disinterested witnesses, show that respondent judge knowingly and voluntarily cooperated with P/Sr. Inspector Salvador in consummating the crime:

(1) On the day of the entrapment, respondent judge asked Bulatao if he had the money, and when he received an affirmative answer, he took Bulatao and the two police officers to his chambers, told the police officers to receive whatever Bulatao would give them,[15] and then left; and

(2) When Bulatao left respondent's chambers and gave the signal to the NBI operatives waiting outside, the marked bills were found by the agents in the possession of SPO2 Jonathan Santos, as the latter was leaving the chambers of respondent judge with SPO4 Carlos Poli. As the Investigating Judge observed, respondent willingly allowed his chambers to be used for the consummation of the illegal transaction. The actions of respondent implies a wrongful intention to commit an unlawful act while in the performance of his official duties.

Canon 2 of the Code of Judicial Conduct enjoins judges to avoid not only impropriety but even the appearance of impropriety in all their conduct. This includes not taking an undue interest in the settlement of criminal cases pending before them as this may compromise the integrity and impartiality of their office.[16] As the visible representation of the law and of justice, their conduct must be above reproach and suspicion.[17] By acting as an accomplice to P/Sr. Inspector Salvador, respondent judge violated not only the law but also the Code of Judicial Conduct.

Nor does the fact that respondent committed misconduct during a preliminary investigation, which is non-judicial in character, exempt him from the disciplinary power of this Court as the conduct of a preliminary investigation is only an addition to his judicial functions.[18]

In *Cabrera vs. Pajares*,[19] where the payment of the money to respondent judge in his chambers was witnessed by an NBI agent, this Court ordered his dismissal from the service. Likewise, in *Court Administrator vs. Hermoso*,[20] where the judge received money from a party to a case pending before his sala and was entrapped by an NBI agent, this Court ordered his dismissal. In addition, the erring judge is liable to the forfeiture of his leave credits and retirement benefits and his dismissal shall be with prejudice to reemployment in any branch of the government or any of its agencies or instrumentalities, including government-owned and controlled corporations, as provided by Section 9, Rule 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) and our current rulings.[21]

Respondent judge was previously convicted in two administrative cases filed before this Court. In A.M. No. MTJ-91-616, entitled "*Clodualdo Escobar vs. Garcia*," the Court, in a resolution dated September 1, 1992, found respondent guilty of palpable ignorance of Rule 114, section 8 resulting in the denial of due process to the prosecution in a criminal case. Respondent was fined an amount equivalent to 15 days salary with warning that a repetition of the same would be dealt with more severely. In another case, A.M. No. MTJ-95-1049, entitled "*Eloisa Bernardo v. Garcia*," the Court, in a resolution dated June 28, 1995, found respondent guilty of deliberately delaying his decision in a civil case and falsifying certificates of service. He was reprimanded and ordered to pay a fine of P5,000.00 with warning that a repetition of the same or similar acts will be dealt with more severely.

WHEREFORE, the Court finds respondent Judge Dominador L. Garcia guilty of serious misconduct and

accordingly orders his DISMISSAL from the service and the forfeiture of his leave credits and retirement benefits, with prejudice to reemployment in any branch of the government or any of its agencies or instrumentalities, including government-owned and controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 34-44.

[2] Id., p. 143.

[3] Id., p. 24.

[4] Id., pp. 57-59, 65.

[5] Id., pp. 63-64, 66-68.

[6] Id., p. 122.

[7] Id., pp. 247-248.

[8] “SECTION 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly over hear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described. (Italics ours).

“....

“SEC. 4. Any communication or spoken word, or the existence, contents, substance, purport, or meaning of the same or any part thereof, or any information therein contained, obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation. (Italics ours).”

[9] Ramirez vs. Court of Appeals, 248 SCRA 590 (1995).

[10] Manuel vs. Calimag, Jr., 307 SCRA 657 (1999).

[11] Centrum Agri-business Realty Corporation vs. Katalbas-Moscardon, 247 SCRA 147 (1995).

[12] Lorenza vs. Encomienda, 302 SCRA 632 (1999); Liwanag vs. Lustre, 306 SCRA 55 (1999); REVISED RULES OF EVIDENCE, Rule 133, Sec. 5.

[13] L.B. Reyes, The Revised Penal Code: Criminal Law, vol. 2, pp. 366-367 (14th ed., 1998).

[14] Revised Penal Code, Art.18.

[15] Rollo, p. 132.

[16] Ferrer vs. Maramba, 290 SCRA 44 (1998), Code of Judicial Conduct, Rule 2.01.

[17] Cabrera vs. Pajares, 142 SCRA 127 (1986); Quiz vs. Castano, 107 SCRA 196 (1981); Montemayor vs. Collado, 107 SCRA 258 (1981).

[18] Radomes vs. Jakosalem, 320 SCRA 445 (1999).

[19] 142 SCRA 127 (1986).

[20] 150 SCRA 269 (1987).

[21] National Bureau of Investigation vs. Reyes, 326 SCRA 109 (2000); Nazareno vs. Almario, 268 SCRA 657 (1997); Tabao vs. Espina, 257 SCRA 298 (1996); Centrum Agri-Business Realty Corporation vs. Katalbas-Moscardon, 247 SCRA 145 (1995); Lee vs. Abastillas, 234 SCRA 29 (1994); Imbing vs. Tiongson, 229 SCRA 690 (1994).

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