

BENJAMIN J. SOTO, COMPLAINANT, VS. RUBEN B. LACRE, RESPONDENT.

A.C. No. 1019. June 30, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

Benjamin J. Soto filed a complaint for disbarment against Ruben B. Lacre for having notarized on July 23, 1970 a special power of attorney wherein it is stated that Enrico A. Mendoza, one of the principals who executed the said document, is of legal age when in truth he was then only eighteen years old, as shown in his residence certificate, the number, date and place of issue of which are indicated in the notarial acknowledgement for the said document.

After the respondent had filed his answer, the case was referred to the Solicitor General for investigation, report and recommendation.

Certain facts about the personal circumstances of complainant Soto and Enrico A. Mendoza should be stated at the outset so that the case may be viewed in proper perspective.

Complainant Soto is the brother of Damian Soto, the common-law husband of Filomena Ablaza. Filomena is the aunt of Enrico. Filomena and Enrico are the co-owners of a parcel of land located at 617-19 Pacheco Street, Tondo, Manila which is occupied by Benjamin Soto.

In August, 1970 Filomena Ablaza and Enrico A. Mendoza filed in the city court of Manila an ejectment suit against Benjamin J. Soto in order to recover possession of the said land. It was in connection with the prosecution of that suit that the above-mentioned special power of attorney was executed by Filomena and Enrico in favor of Jose T. Vicencio who was empowered to represent the co-owners in the ejectment action.

Benjamin J. Soto lost the case in the city court and in the Court of First Instance. He appealed to the Court of Appeals where the case is pending.

The Solicitor General in his report of March 22, 1977 explains why the complaint for disbarment should be dismissed:

"The primary issue involved is whether respondent as a notary public should go beyond the identity of the parties to a contract by inquiring as to the veracity of the contents stated in the document particularly the age of the affiants.

"Complainant contends that it is incumbent upon respondent as a notary public to inquire into the actual age of Enrico Mendoza inasmuch as the Special Power of Attorney executed by Enrico Mendoza and Filomena Ablaza became the basis of a complaint for unlawful detainer against him. On the other hand, respondent claims that the acknowledgment of the document by him, in his capacity as notary public, is limited to the establishment of the identity of the parties involved therein and that they executed the document voluntarily and of their own free will, so that outside of this, he is not answerable to the veracity of the allegations stated in the document in question.

"Public Act No. 2103, Section 1, provides that an acknowledgment shall be made before a notary public or an officer duly authorized by the law of the country to take acknowledgments of instruments or documents in the place where the act is done. It consists of a certification of said officer that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, this certificate shall so state.

"Accordingly, the notary's primary duty is to ascertain the identity of parties executing the document and whether the execution of the document by them is their own free act. While incidentally also he has to ascertain a party's capacity to act, in the case at bar there was nothing to indicate in respondent that Enrico Mendoza, then aged 18, was still a minor. Respondent owed no special duty to require proof of the age of Enrico Mendoza. By appearance it was not possible for respondent to assume that Mendoza was below the age of majority. Respondent did all that a prudent man was expected to do.

"As fully established by the defense, by merely looking at Enrico Mendoza, when he personally appeared before respondent lawyer to sign and acknowledge the Special Power of Attorney he and Filomena Ablaza had executed in favor of Jose T. Vicencio, respondent was fully convinced that said Enrico Mendoza was of legal age, because respondent noted that Enrico Mendoza is approximately 5'8", taller than he, who is 5'6", and approximately weighs more or less 130 pounds (tsn. pp. 23-24, September 10, 1973; tsn. p. 46, October 27, 1972).

"The antecedent circumstances attendant to the subsequent institution of this disbarment proceeding clearly indicate that complainant was not entirely motivated by assuring merely that respondent as a member of the bar adheres to the lawyer's oath. He lost the ejectment case in the City Court of Manila. He appealed to the Court of First Instance of Manila. He lost there also. He then took an appeal to the Court of Appeals. Complainant also filed a criminal case for falsification of public document against Enrico Mendoza, Jose T. Vicencio and respondent lawyer. The said criminal case was dismissed for failure of the prosecution to establish the elements of falsification (tsn, pp. 12-15 & 36, September 10, 1973). Thus, Benjamin Sotto's instant complaint gives the impression that it may have been prompted by his resentment in having lost the civil and criminal cases. His failure to strike back at his brother, Damian Soto, directly or through the latter's wife, Filomena Ablaza, and his ward, Enrico Mendoza, by the dismissal of the falsification case, apparently deepened his frustration. As a final thrust, complainant evidently decided to unleash his disappointments on respondent lawyer, who appeared in the ejectment case for Damian Soto and his family.

"Caution or great care should be taken by persons before instituting a complaint for disciplinary action against members of the bar. Otherwise, irreparable injury would result from unfounded or baseless accusation such as the instant case. Certain degree of care, prudence and reflection should, therefore, be exercised by them before complaining against any member of the bar, who is not guilty of negligence, malice or corruption to avoid undue harassment and prejudice to him or her. And as the foregoing discussion shows, no proof has ever been presented to prove that respondent Ruben Lacre was guilty of any unethical conduct or malpractice.

"In disbarment proceedings, the burden of proof rests upon the complainant and the charge against the lawyer must be established by convincing proof. The record must disclose as free from doubt a case which compels the exercise by the court of its disciplinary powers. The dubious character of the act done as well as of the motivation thereof must be clearly demonstrated (Go vs. Candoy, Adm. Case No. 736, October 23, 1967; de los Santos vs. Bolaños, Adm. Case No. 483, July 21, 1967, 20 SCRA 763; Toquib vs. Tomol, Jr., Adm. Case No. 554, March 25, 1970, 32 SCRA 156).

"While the duty of a notary public is principally to ascertain the identity of the affiant and the voluntariness of the declaration, it is nevertheless incumbent upon him at least to verify the capacity of the affiant. This respondent did. Having been convinced that Enrico Mendoza by his appearance was of the required age to execute the Special Power of Attorney it cannot be gainsaid that respondent lawyer acted prudently under the

circumstances of this case. Hence, no negligence may be attributed to respondent lawyer.

"In the herein case, the special power of attorney was already prepared when brought to respondent, Ruben Lacre. The numbers, dates and place of issue of the respective residence certificates of the parties were already written therein. So what respondent did was to compare the numbers, dates and place of issue stated therein, with the residence certificates presented to him, without, however, looking over the data as to place of birth, date of birth, status and others, as he was convinced as already stated, by the physical appearance of Enrico Mendoza that he is of legal age.

"Satisfied that the persons appearing before him were the parties to the document (Exhibit A) and that they acknowledged to him that they executed it of their own free will and deed, respondent notarized the said document. No legal liability, we submit, can grow out of his act. However, if respondent is to be held accountable at all, it must be on the ground of negligence, malice or corruption, which have not been adduced in this case.

"Respondent Ruben Lacre, it appears, had not neglected to perform the duty imposed upon him as a notary public.

"To justify disbarment or suspension, the case against a lawyer must be free from doubt. The objective of the discipline of an attorney is not retribution or punishment, but 'to protect the administration of justice, by requiring that those who exercise this important function shall be competent, honorable and reliable; men in whom courts and clients may repose confidence' (In re MacDougall, 3 Phil. 70).

"The present proceeding apparently motivated by vengeance cannot prosper by mere conjectures and surmises. The legal presumption being that the respondent is innocent of the charges preferred and has performed his duty as an officer of the Court in accordance with his oath, complainant herein must assume the burden of overcoming this inference by convincing proof, but he, nevertheless, fell short of this requirement, hence, this petition must be dismissed for lack of merit."

After a conscientious study of the evidence, we find the observations and recommendation of the Solicitor General to be well-founded. Respondent evidently acted under an honest mistake of fact. There is no showing that he acted maliciously. Hence, the maxim, *ignorantia facti excusat*, may be applied in this case.

WHEREFORE, respondent is exonerated and this case is dismissed.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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