

LUIS ARBOLEDA, COMPLAINANT, VS. ATTY. EDUARDO GATCHALIAN, RESPONDENT.

A.C. No. 1034. July 23, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This proceeding for disbarment was instituted by complainant Luis Arboleda against respondent Eduardo Z. Gatchalian, a member of the Philippine Bar. In a complaint dated September 8, 1971 addressed to this Court, complainant alleged that on December 19, 1966, respondent prepared and notarized a contract of lease over a residential house between Luciana Pascual (complainant's common-law wife) as lessor, and Cornelio Lamatao as lessee; that the said contract is prejudicial to the complainant and Luciana Pascual; that Cornelio Lamatao, taking advantage of her illiteracy, made her sign the said contract of lease in the guise of a receipt for rentals on December 17, 1968; that respondent notarized the contract in her absence and without her knowledge and consent; and that her residence certificate used in the said contract was falsified (pp. 1-3, rec.).

In a resolution dated September 14, 1971, this Court required respondent Eduardo Z. Gatchalian to answer the complaint (p. 9, rec.).

Respondent, in his answer dated September 28, 1971, admitted that he notarized the contract of lease, but claimed that the parties discussed to him the contractual terms and conditions before he prepared the document; and that after explaining and translating to them in Tagalog the meaning of its contents, the parties and their witnesses signed the contract freely and voluntarily, and thereafter respondent notarized the same (pp. 11-13, rec.).

Issues having been joined, the case was referred to the Solicitor General for investigation, report and recommendation in a resolution of this Court dated October 8, 1971 (p. 14, rec.). On May 28, 1974, the report and recommendation of Solicitor General Estelito P. Mendoza, Assistant Solicitor General Octavio R. Ramirez and Solicitor Enrique M. Reyes was submitted (pp. 169-175, rec.).

Discussing the evidence submitted by the parties, the pertinent portion of the report states:

"It seems difficult to be convinced that Luciana Pascual signed the lease contract in question in the mistaken belief that it is a receipt for rental payment of Cornelio Lamatao, considering that on October 6, 1966, she signed a receipt with Cornelio Lamatao (Exh. 5, p. 82, Folder of Exhs.); on December 6, 1966, she also signed a similar receipt (Exh. 33, p. 110, Folder of Exhs.). There were undisputedly signed receipts before December 19, 1966, so that she could have easily noticed the difference even at least from the size of the paper she was signing on. Besides she signed at least six (6) copies of the lease contract, for notarial purposes, which is not that many when she signs the receipts shown to her by Cornelio Lamatao. She could have inquired if really she was just misled, why she had to sign several copies. Moreover, her sister, Elpidia Pascual, who signed as witness to the instrument, cannot claim illiteracy or ignorance, because she is a registered voter who can read or write Tagalog and English (Exh. 42, p. 120, Folder of Exhs.). And Cornelio Lamatao and Jose Pelopero, both signatories to the instrument, positively testified that Luciana Pascual signed said lease contract after having been explained to her in Tagalog by respondent. The testimony of Virginia Salazar that Luciana

Pascual was sick from December 16 to 20, and she treated her with 'ventosa' could not be of much help, because she does not recall the year this took place. Neither is the testimony of Dr. Soqueno and Luis Arboleda, that she was sick is of convincing importance because her house is only about 300 meters away from the house of respondent where he notarized that the lease contract. According to Dr. Soqueno, her sickness is 'easy-fatigability and with rise of blood pressure, hypertension.' a case of 'cardiac pathology' (p. 4. t.s.n., Feb. 18, 1972). She was not bedridden by this sickness so that we cannot discount the possibility of her being able to walk. Finally, we are at a loss why (despite the fact that) the incident happened in 1966, (yet) the disbarment charge was filed only in 1971.

"Under the circumstances, there is lacking here that convincing proof to warrant the exercise of disciplinary powers, x x x"

On the basis of the above findings, the Office of the Solicitor General recommended that "the instant case be dismissed."

WE agree with the aforesaid findings and recommendation. A review of the evidence on record shows that complainant failed to establish by clear and convincing proofs any irregularity committed by the respondent when he prepared and notarized the contract of lease in question. Indeed, no evidence was submitted to substantiate the charge that the residence certificate of Luciana Pascual was forged or that respondent had any illegal participation in its procurement. Neither is there any proof that in notarizing the document, respondent was the recipient of a special favor to compel him to compromise his profession as a lawyer and as a notary public.

It is human nature to assert a right most strongly when it is first invaded. But it took the complainant about five years to wake up from his lethargy. The incident complained of happened in 1966. Yet the complaint for disbarment was filed only in 1971. This long-delayed action indicates that his complaint is baseless and without merit. It also creates a suspicion about the motives of the complainant. It is worthy of note that the complainant is but the common-law-husband of Luciana Pascual. This factor could lend truth to the testimony of Cornelio Lamatao that the reason why Luciana Pascual wanted to execute and sign the lease contract, instead of complainant Luis Arboleda, was because of her fear that the wife and children of the complainant may claim the house later on. Considering therefore, that the interest of the complainant in the house and in its rentals was adversely affected by the lease contract, he has to vent his ire on the respondent lawyer who prepared the document in question, by filing this disbarment case against him.

This Court has held that in disbarment proceedings, the burden of proof rests upon the complainant and the charge against the lawyer must be established by convincing proof (*Go vs. Candoy*, A.C. No. 736, Oct. 23, 1967, 21 SCRA 439; *Toquib vs. Tomal, Jr.*, A.C. No. 554, March 25, 1970, 32 SCRA 156; *In re Atty. Felizardo M. de Guzman*, A.C. No. 838, Jan. 21, 1974, 55 SCRA 139). The record must disclose as free from doubt a case which compels the exercise by this Court of its disciplinary powers. The corrupt character of the act done must be clearly demonstrated. Moreover, considering the serious consequences of the disbarment or suspension of a member of the Bar, We have consistently held that clearly preponderant evidence is necessary to justify the imposition of either penalty (*De Guzman vs. Tadeo*, 68 Phil. 554; *Lim vs. Antonio*, A.C. No. 848, Sept. 30, 1971, 41 SCRA 44). This Court likewise held that where there is no proof that respondent lawyer was guilty of any unethical conduct, harassment and malpractice, the disbarment case against him should be dismissed (*Ricafort vs. Baltazar*, A.C. No. 661, June 26, 1967, 20 SCRA 418; *Delos Santos vs. Bolanos*, A.C. No. 483, July 21, 1967, 20 SCRA 763).

WHEREFORE, THIS ADMINISTRATIVE COMPLAINT IS DISMISSED AND RESPONDENT, ATTY. EDUARDO Z. GATCHALIAN, IS EXONERATED OF THE CHARGE.

Makalintal, C.J., Castro, Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

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