

JOSE BATOY, COMPLAINANT, VS. ATTY. VICENTE M. BLANCO, RESPONDENT.*A.C. No. 1233. August 14, 1978*

Ponente: CONCEPCION, JR., J.

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Administrative cases for the disbarment of the respondents upon the grounds of gross misconduct in office; deceit, dishonesty and misappropriating funds of the client; and malpractice.

It is not disputed that in 1969, the complainant Jose Batoy, then municipal treasurer of the towns of Sinacaban and Sapang Dalaga, Misamis Occidental, was charged with malversation of public funds before the Court of First Instance of Misamis Occidental.[1] An administrative case was similarly filed against him. Jose Batoy was assisted in these cases by the herein respondent Vicente M. Blanco. After trials, held separately, Jose Batoy was exonerated in two of the criminal cases, as well as in the administrative case. He was found guilty in Criminal Case No. 6677 which he appealed to the Court of Appeals on December 19, 1969.[2]

On December 14, 1971, Vicente M. Blanco, in behalf of his co-respondent, John Go "(r)eceived from Jose Batoy the amount of three hundred pesos (P300.00) for payment of Printing of his brief in his case appealed to the Court of Appeals,"[3] and on December 27, 1971, "Attys. Blanco and Go" counsel for the appellant, sent a telegram to the Court of Appeals asking for an extension of 20 days within which to file the brief for the appellant.[4] The Court of Appeals, instead, granted Jose Batoy 90 days from notice, with a warning that the appeal would be dismissed upon failure to file the brief within the said period.[5] Upon finding that no brief had been filed within the extended period which expired on May 3, 1972, the Court of Appeals required Jose Batoy and his counsel on July 5, 1972 to show cause why the appeal should not be dismissed for failure to file the appellant's brief.[6] Jose Batoy submitted an explanation, stating that his counsel, herein respondent Vicente M. Blanco, was holding the position of First Assistant Provincial Fiscal of Misamis Occidental and that he (Batoy) was still looking for an attorney to prepare his appellant's brief. He asked the appellate court for 30 days within which to file his brief.[7] The respondent Vicente M. Blanco, for his part, filed a motion to withdraw as counsel because of his appointment as First Assistant Provincial Fiscal of Misamis Occidental and tendered an apology to the Court for having allegedly overlooked or forgotten to file a motion to withdraw as counsel earlier.[8] The appellate court allowed the respondent Vicente Blanco to withdraw as counsel and granted Jose Batoy a period of 30 days from notice within which to file his brief. Again, he was warned that the appeal would be dismissed if the brief was not filed within the period given.[9]

On November 3, 1972, the respondent John Go entered his appearance as counsel for Jose Batoy and asked the Court of Appeals for 20 days within which to file the brief for the appellant,[10] and the following day, he sent a telegram to the appellate court of the mailing of his motion for extension of time within which to file the brief for Jose Batoy.[11] The Court of Appeals, however, dismissed the appeal of Jose Batoy since he had already been given several extensions of time.[12] Upon learning of the dismissal of his appeal, Jose Batoy wired "Attys. Go and Blanco" in Quezon City to file a motion for the reconsideration of the order,[13] but, the respondent John Go

advised him to abandon the appeal because of its lack of merit.[14] Jose Batoy, however, insisted on his appeal and hired another lawyer to prosecute the same. Since the records of the case had already been remanded to the trial court for the execution of the judgment, Jose Batoy filed a motion with the trial court to defer promulgation of the judgment to give him an opportunity to file certiorari proceedings with this Court so that his appeal may be reinstated. The respondent Vicente M. Blanco, his former counsel of record and now First Assistant Provincial Fiscal of Misamis Occidental, offered "no objection" to the motion.[15]

This Court dismissed the petition for certiorari on July 20, 1973,[16] and on August 21, 1973, Jose Batoy filed another motion with the trial court to defer the promulgation of the judgment. Again, the respondent Vicente M. Blanco made no objection to the motion of Jose Batoy.[17] The motion to defer promulgation of the judgment was denied for lack of merit,[18] and soon thereafter, these complaints were filed with this Court. A similar complaint was filed with the Department of Justice.

The complaints were referred to the Solicitor General for investigation, report and recommendation and upon the preceding facts, the Solicitor General found the respondent Vicente M. Blanco guilty of: (1) neglect of duty and lack of dedication to a client's cause, for failure to file the appellant's brief notwithstanding his receipt of the amount of P300.00 for its printing and for failure to file a memorandum in Criminal Case No. 6677 although required by the trial court to do so; (2) malpractice, in representing the government and not objecting to the two motions to defer the promulgation of judgment filed in the same case where he was formerly the counsel for the accused; and (3) grave misconduct, in retaining the P300.00 that was given to him for the printing of the brief despite the fact that he failed to submit the brief, and recommends his suspension for a period of not less than two years. The respondent John Go on the other hand, was absolved from the charges against him.[19]

After going over the records of these cases, We agree with the Solicitor General that the respondent John Go is not guilty of the charges against him. The record shows that his services as counsel for the complainant Jose Batoy was solicited only on October 30, 1972, a few days before the expiration of the period given to Jose Batoy pursuant to the resolution of the Court of Appeals dated September 15, 1972, and he immediately wired the Court of Appeals asking for an extension of time to file the brief, but, the Court of Appeals denied his motion and dismissed the appeal, "it appearing that the appellant has already been granted 30 days extension from notice of resolution dated September 15, 1972 aside from the 90 days extension granted in the resolution of January 13, 1972." It is thus clear that the dismissal of the appeal was not due to an act or omission of the respondent John Go.

The respondent John Go cannot also be faulted for the preparation of the receipt for the amount of P300.00 for the printing of the appellant's brief, as well as of the sending of the telegram, Exhibit F, to the Court of Appeals on December 27, 1971 asking for an extension of time to file the appellant's brief, although his name was included therein, in view of the statement of Jose Batoy that he was not aware if the respondent John Go knew of the execution of the receipt since he dealt with the respondent Vicente Blanco all the time.[20]

We also agree with the Solicitor General that the respondent Vicente M. Blanco is guilty of the charges against him. We believe, however, that the acts committed by him are not serious enough to warrant his disbarment. Nor is there culpable malpractice or dishonesty as to justify his suspension for more than two years, as recommended by the Solicitor General.

Indeed, the respondent Vicente M. Blanco failed to submit a memorandum for the accused Jose Batoy in Criminal Case No. 6677, but a memorandum is not evidence and the court or body to whom it is directed may or may not consider the same,[21] so that the failure to file the memorandum does not call for the imposition of a severe penalty upon the respondent.

With respect to the non-filing of the appellant's brief, the fault cannot be totally attributed to the respondent

Vicente M. Blanco. It partly lies with the complainant Jose Batoy in having neglected to protect his rights by retaining the services of another lawyer to represent him and file the brief. Jose Batoy was aware that the respondent Vicente M. Blanco had been appointed First Assistant Provincial Fiscal of Misamis Occidental whose duties are incompatible with his remaining as his counsel.[22] And yet he did not look for another lawyer to represent him. If he had relied upon the assurance of the respondent Blanco that the latter would prepare the brief to be signed by the respondent John Go, as he claims,[23] complainant Batoy should have reminded the respondent Blanco, from time to time, of the preparation and submission of the brief. But, he failed to do so and allowed the period to lapse. The complainant cannot plead ignorance because he was personally furnished with copies of the appellate court's resolutions.[24]

The act of the respondent Vicente M. Blanco in retaining the P300.00 that was given to him for the printing of the appellant's brief cannot be considered grave misconduct on the part of said respondent because the records do not show that the complainant Jose Batoy had demanded its return. On the other hand, the respondent Blanco declared that he tried to return the money to Jose Batoy but the latter told him to apply it to his unpaid accounts with the respondent.[25]

But the act of the respondent Vicente M. Blanco in representing the government in a case previously handled by him as a private practitioner and not offering any objection to the motion to defer the promulgation of judgment constitutes malpractice and is censurable for it is unprofessional to represent conflicting interests.

We also find the attitude of the respondent Blanco, in sending the telegraphic motion for extension of time to file brief, Exhibit F, without any intention of complying with such request,[26] to be censurable as it reveals a disrespect for the judiciary and the established machinery of justice.

In view of all the foregoing, the imposition of a penalty of suspension for two (2) months upon the respondent Vicente M. Blanco is most equitable.[27]

WHEREFORE, the herein respondent Vicente M. Blanco is hereby suspended from the practice of law for a period of two (2) months. The said respondent is further ordered to return the amount of P300.00 to Jose Batoy. The complaint against John Go is hereby dismissed.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Crim. Case Nos. 6677, 6678, and 6679.

[2] p. 38, Rollo of Adm. Case No. 1250.

[3] Exhibit E.

[4] Exhibit F.

[5] Exhibit G.

[6] Exhibit H.

[7] Exhibit I.

[8] Exhibit J.

[9] Exhibit L.

[10] Exhibit N.

[11] Exhibit M.

[12] Exhibit O.

[13] Exhibit P.

[14] par. 8 of Comment of John Go, p. 25, rollo of Adm. Case No. 1250.

[15] Exhibit R.

[16] Exhibit Q-1.

[17] Exhibit S.

[18] Exhibit T.

[19] p. 63, Rollo of Adm. Case No. 1250.

[20] p. 51, t.s.n., August 5, 1974.

[21] Pabores vs. Commissioner, 104 Phil. 505.

[22] p. 52, t.s.n. of Sept. 16, 1974.

[23] p. 59, t.s.n. of Aug. 5, 1974.

[24] See Exhibits G, H, L, and O.

[25] p. 13, t.s.n., of Sept. 17, 1974.

[26] See p. 3, t.s.n. of Sept. 17, 1974.

[27] Respondent Blanco attained the compulsory age of retirement on January 22, 1978 and has been retired. His suspension from the practice of law can not consequently affect the government service.

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