

ANA F. RETUYA, COMPLAINANT, VS. ATTY. IÑEGO A. GORDUIZ, RESPONDENT.

A.C. No. 1388. March 28, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This disbarment case is linked to Administrative Case No. 1431-MJ which was filed by Ana F. Retuya against Municipal Judge Paulo A. Equipilag of Maasin, Leyte and which was decided on July 16, 1979 (Retuya vs. Equipilag). The facts of that case, which also gave rise to this disbarment case, are as follows:

"Ana F. Retuya, a widow with four minor children, filed a claim for workmen's compensation against Eastern Shipping Lines, Inc., the employer of her husband who died in 1968. In a decision dated December 4, 1970 the Workmen's Compensation Unit at Tacloban City awarded to Ana the sum of P8,792.10 consisting of (a) P6,000 as compensation benefits, (b) P2,292.10 for medical and hospitalization expenses, (c) P200 as burial expenses and (d) P300 as attorney's fees of Atty. Iñego Gorduiz (Case No. 9728).

"The employer appealed. During the pendency of the appeal, the employer proposed to compromise the claim by paying P4,396.05 or only one-half of the total award. Ana accepted the proposal and directed that the amount be remitted to Fiscal Mamerto Daclan through the Philippine National Bank's branch at Maasin, Southern Leyte.

"The employer paid the reduced award on November 16, 1972. Ana sent to the employer the receipt and release signed by her with a covering letter dated December 19, 1972 wherein she explained that her lawyer, Gorduiz, did not sign the joint motion to dismiss the claim because he wanted twenty percent of the award as his attorney's fees. She was willing to give him ten percent.

"After she had cashed the check for P4,396.05, she was not able to contact Gorduiz and pay his fee. Then, unexpectedly, in February, 1973, she was served with a warrant of arrest issued in Criminal Case No. R-2362 of the municipal court of Maasin. To avoid detention, she had to post bail in the sum of one thousand pesos.

"It turned out that on January 12, 1973 Atty. Gorduiz executed an affidavit stating that Ana had misappropriated his attorney's fees amounting to three hundred pesos and that he had demanded payment of the amount from her but she refused to make payment and, instead, she went to Cebu and stayed there for a long time.

"On the basis of that affidavit, the acting chief of police filed against Ana a complaint for estafa in the municipal court of Maasin. After posting bail, she filed a motion to quash wherein she explained that she did not pay the fees of Atty. Gorduiz because he was demanding one-third of the award; that when she did not accede to his demand, he lowered his claim to eight hundred pesos, and that she bargained for six hundred fifty pesos but he refused to accept that amount. Ana averred that the estafa case was filed just to harass her.

"Judge Paulo A. Equipilag denied the motion to quash. He granted the motion of Atty. Gorduiz requiring Ana to produce a copy of the decision awarding her workmen's compensation for her husband's death.

"The estafa case was not tried. Atty. Erasmo M. Diola, as lawyer of Ana, offered to Atty. Gorduiz the sum of five hundred pesos as settlement of the case. The offer was accepted.

"On November 22, 1973, the acting chief of police filed a motion to dismiss the case on the basis of the affidavit of Atty. Gorduiz executed on that date stating that the prosecution witnesses had allegedly become hostile and that he was no longer interested in further prosecuting the case. Also, on that same day, Judge Equipilag dismissed the case.

"In spite of the dismissal of the estafa case, Ana F. Retuya felt aggrieved by the proceedings therein. In a complaint dated July 24, 1974 but filed in this Court on October 30, 1974, she asked for the disbarment or suspension of Atty. Gorduiz and Judge Equipilag. The disbarment case against Gorduiz was referred to the Solicitor General.

"The case against Judge Equipilag was investigated by the Judge of the Court of First Instance of Southern Leyte."

This Court found that there was no justification for suspending respondent Judge. However, he was admonished to be more prudent and circumspect in the discharge of his duties so as to obviate the suspicion that, for an ulterior motive, he was in cahoots with the offended party in a criminal case for the purpose of using the strong arm of the law against the accused in an oppressive and vindictive manner.

The Solicitor General asked the provincial fiscal of Southern Leyte to investigate the case against Gorduiz. The fiscal in her report of July 8, 1975 recommended the dismissal of the case.

The Solicitor General, disagreeing with that recommendation, filed in this Court against Gorduiz a complaint wherein he prayed that Gorduiz be suspended for six months because the latter, in filing the estafa case, had promoted a groundless suit against his client.

Ana F. Retuya testified before the investigating Fiscal that in December, 1972 she was willing to pay Gorduiz six hundred fifty pesos as his attorney's fees but he demanded a bigger amount. He lodged a complaint for estafa against her and she was arrested. She had to post bail in the sum of one thousand pesos. As already stated above, the estafa case was later dismissed when Ana paid Gorduiz the sum of five hundred pesos.

In his testimony before the investigating fiscal and this Court's legal officer, respondent Gorduiz denied that he demanded as attorney's fees an amount higher than three hundred pesos. He explained that he filed the estafa case because after Ana had received payment of the award, she did not turn over to him the attorney's fees of three hundred pesos in spite of her promises to pay the same and his demands for payment (Exh. 7 and 8).

Gorduiz declared that Ana filed the disbarment case against him in order that she could evade the payment of his attorney's fees in the other cases which he had handled for her. It was also possible that someone who had a score to settle with Gorduiz had instigated the filing of this case against him.

He further declared that he filed the estafa case because he thought that Ana had absconded when she stayed in Cebu City for a long time (23-24 tsn, June 26, 1979). He claimed that he spent one hundred pesos of his own money in gathering evidence which was presented in the workmen's compensation case. He had also advanced around two hundred pesos to cover the expenses in the other cases which he had handled for Ana.

After reflecting on the conflicting contentions of the parties, the Court finds that there is justification for suspending the respondent.

Respondent acted precipitately in filing a criminal action against his client for the supposed misappropriation of his attorney's fees. It is not altogether clear that his client had swindled him and, therefore, there is some basis for

concluding that, contrary to his lawyer's oath, he had filed a groundless suit against her and had harassed and embarrassed her.

Paragraph 14 of the Canons of Legal Ethics prescribes that "controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud".

WHEREFORE, the respondent is suspended from the practice of law for a period of six months counted from notice of this decision. A copy of this decision should be attached to his record in the Bar Confidant's office.

SO ORDERED.

Barredo, (Chairman), Atonio, and Concepcion, Jr., JJ., concur.

Abad Santos, J., There was no case of estafa against Ana F. Retuya, respondent's client. When he filed one against her he was guilty of harassment and filing an unfounded suit. I am far suspension for six months as recommended by the Solicitor General.

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