

EMMA C. BANAAG, COMPLAINANT, VS. JOSE MA. SALINDONG Y GUZMAN, RESPONDENT.*A.C. No. 1563. February 20, 1984*

Ponente: FERNANDO, C.J.

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This is another of those administrative complaints where the charge is one of immoral conduct. Respondent Jose Ma. Salindong, a member of the bar, was sought to be disbarred on that ground. From the allegations of the complaint, it would appear that complainant, Emma C. Banaag, who is a married woman, was appointed a casual employee in the Regional Office of the Bureau of Internal Revenue at San Pablo City. Respondent was then the Acting Chief of the Specific Tax Department of the then Bureau of Internal Revenue. He, also married, lost no time on courting her, with a promise to make her a permanent employee should she live with him as his common-law wife. She finally acceded to such arrangement. She left her husband to join respondent in Manila until a child named Josephine Marie Capistrano Salindong was born on November 2, 1972 out of their illicit relationship. During the time that complainant and respondent were living together as man and wife in Manila, she was given a monthly support of P2,000.00. Two weeks before the birth of their child, however, respondent abandoned the complainant and stopped giving her monthly support up to the time the complaint was filed.

Respondent was required to answer. In his responsive pleading to the complainant, captioned "Answer and Motion to Dismiss," he denied all the material averments in the complaint. By way of affirmative defenses, he alleged that there was no more cause of action against him based on the affidavit of desistance of complainant dated March 28, 1976. Under date of September 22, 1976, this Court required the complainant to file a "Reply" to the "Answer and Motion to Dismiss" of respondent. Accordingly, complainant filed on October 25, 1976 a pleading captioned "Rejoinder and Opposition to Dismiss" wherein she reiterated in substance the allegations in her complaint. She further alleged that respondent induced her to execute the affidavit of desistance attached to respondent's answer upon the promise that he would live with her and support the child, but once appointed to his present position as Chief of the Specific Tax Division of the Bureau of Internal Revenue, respondent did not comply with his promise. She was therefore withdrawing her affidavit of desistance.

This Court then referred this case to the Solicitor General for investigation, report and recommendation.

Such Report and Recommendation was then submitted to this Court.[1] On the question of the sufficiency of evidence, it stated: "In the instant case, the only evidence in support of the complaint is complainant's own testimony. But said testimony has little or no value in evidence because she was not cross-examined by the respondent due to her persistent failure to appear for cross-examination inspite of due notice." [2] Instead, what she eventually did was to submit anew an affidavit of desistance according to such Report.

It was made clear in the Report that the loss of interest by complainant in prosecuting the case does not of itself suffice to call for the automatic dismissal of the administrative complaint.[3] Nonetheless, in the absence of any credible evidence against respondent, there would be no justification for a finding of guilt. As noted in the Report,

confidence in such a conclusion was strengthened by her admission: "Atty. Hipolito: When the respondent did not give adequate support to your child, what did you do if you do anything? 'Mrs. Banaag: When I was asking and he did not give me I did not do anything. I only filed charges against the respondent because of the insult he hurled at me during the meeting at the office.' (pp. 68-69, t.s.n., Dec. 29, 1976)."[4]

The recommendation was for the dismissal of the complaint due to "insufficiency" of evidence. Such a recommendation merits approval.[5] The quantum of proof required to warrant a disciplinary action was not met. Nonetheless, there are circumstances not sufficiently explained which, to say the least, justify the inference that respondent's conduct could not be characterized as meeting the high standard that membership in the bar imposes.

WHEREFORE, the administrative complaint against Attorney Jose Ma. Salindong is dismissed. Let a copy of this resolution be spread on his record.

Makasiar, Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Abad Santos, J., see separate concurrence.

[1] It was submitted by Solicitor General Estelito P. Mendoza assisted by Assistant Solicitor General Ruben E. Agpalo and Solicitor Manuel C. Chio.

[2] Report and Recommendation.

[3] Reliance is placed on *Go v. Candoy*, Adm. Case No. 736, December 23, 1967, 21 SCRA 439.

[4] Report and Recommendation, 23.

[5] Cf. *In re Tionko*, 43 Phil. 191 (1922). Such a doctrine was cited with approval, according to *Atienza v. Evangelista*, Adm. Case No. 1517, November 29, 1977, 80 SCRA 338, in nine subse-quent cases starting from *Javier v. Cornejo*, 63 Phil. 293 (1936), and ending with *Santiago v. Bustamante*, Adm. Case No. 827, April 29, 1977, 76 SCRA 527. *Go v. Candoy*, a 1967 decision, L-27516, October 19, 1967, 21 SCRA 438; *Adorne v. Aldava*, a 1978 decision, Adm. Case No. 801, June 27, 1978, 83 SCRA 734; *Rivera v. Latonero*, Adm. Case No. 1675, November 19, 1982, 118 SCRA 377 and *Adrias v. De Guzman, Jr.*, Adm. Case No. 1409, December 30, 1982, 119 SCRA 505 may like-wise be cited to show the continued adherence to such a principle.

CONCURRING

ABAD SANTOS, J.:

The complaint is a confessed adulteress who compounded her guilt by being a concubine and who filed the case in order to continue an immoral arrangement. Nonetheless her complaint could not be disregarded because this Court is concerned with maintaining the high standards of the legal profession. I am afraid that the insufficiency of the evidence was the result of some understanding between the parties. Hence my reluctant concurrence.

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