

BELEN A. RIVERA, COMPLAINANT, VS. ATTORNEY ORLANDO LATONERO, RESPONDENT.*A.C. No. 1675. November 19, 1982*

Ponente: FERNANDO, C.J.

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The conduct attributed in this complaint for disbarment filed by Belen A. Rivera against respondent Orlando Latonero for violation of the lawyer's oath and gross misconduct in office as attorney, if proven, certainly would call for severe disciplinary sanction. It was alleged by her that on February 14, 1976, complainant was forcibly taken to Santiago, Ilocos Sur by a certain Charlie Decano. The next evening, he succeeded in having sexual intercourse with her through the use of force. Even after their return to Manila, she was again thus victimized. Thereafter, according to her complaint, she was compelled on February 23, 1976 to sign an affidavit that she went voluntarily with Decano. She had to do so because of physical maltreatment. The malfeasance imputed respondent Latonero was that it was made to appear in such affidavit that on that day she appeared before him when in fact she did not. Nor did his wrongdoing stop her. Respondent, according to her, even went to the extent of threatening to accuse her of perjury if she did not withdraw her complaint for forcible abduction with rape against Decano. Complainant stood fast on her resolve. She decided to pursue the criminal case to vindicate her rights. As a result, a case for perjury against her was filed sometime in March by respondent and Decano.

Respondent in his answer denied the allegations of complainant. He stated that she and Decano went to his office on March 18, 1976 at Mobil Oil Philippines, Inc. at Doña Narcisa Building, Paseo de Roxas, Makati, Rizal, for the purpose of preparing an affidavit to be signed by complainant. He was too busy to attend to them the first time and asked them to return some other time. That they did. They did so five days later, on March 23. He first questioned them as to the circumstances relating to the acts imputed to Decano. Then he told a certain Jesus Olega, Jr., an employee of Mobil Oil Philippines, Inc., to type an affidavit in accordance with their wishes on the matter. After the same was typed, he told complainant to read the same. Complainant, after producing her residence certificate, signed the affidavit before respondent in the presence of Charlie Decano and Jesus Olega, Jr. Both she and Decano then left his office. He prayed that the case be dismissed for lack of merit.

The complaint was then referred to the Office of the Solicitor General for investigation, report, and recommendation. Such investigation was duly had, after which the report, with its recommendation, was submitted on July 16 of this year.[1]

After a brief summary of the evidence both for the complainant and respondent member of the bar, the report discussed the finding thus: "After Jesus Olega, Jr. had testified on behalf of respondent, complainant Belen A. Rivera, thru counsel, manifested that she was filing a motion to dismiss and that she was waiving her presence during the presentation of the evidence for the respondent (t.s.n., April 22, 1977, pp. 3-6). Despite this manifestation, Danilo Rivera and respondent himself proceeded to testify in support of respondent's claim that complainant actually appeared before him on February 23, 1976. Respondent and his witnesses recounted the details leading to the execution of the affidavit of complainant, Exhibit 'A'." [2] Further: "On June 7, 1977,

complainant submitted a verified motion to dismiss dated January 7, 1977 alleging that the main case of abduction with rape filed against Charlie Decano had already been dismissed; that as a result thereof, the parties have reached a reconciliation; that in fairness to respondent, she is no longer interested in pursuing the case against him for disbarment; and that she is disauthorizing her counsel of record to further represent her in the instant case. Accordingly, she prayed that 'the instant case be dismissed.'"[3] The report continued: "Respondent submitted in evidence Exhibit '9' which is the affidavit of desistance dated April 26, 1977 filed by complainant in Criminal Case No. 17859, entitled 'People of the Philippines vs. Charlie Decano,' for forcible abduction with rape, pending before the Court of First Instance of Rizal (Branch VI). He also presented in evidence Exhibit '10' which is the order dated April 26, 1977 of the Hon. Eutropio Migrino, presiding judge of the Court of First Instance of Rizal, Branch VI, dismissing the said Criminal Case No. 17859 upon motion in open court made by the fiscal in the presence of complainant herein."[4] Its analysis, according to such report, revealed that "there is factual support for his claim that complainant's affidavit, Exhibit 'A', was indeed signed voluntarily by complainant before him on February 23, 1976. His testimony in this respect was corroborated by Jesus Olega, Jr., the employee who typed the same and recorded the document in respondent's notarial book, and Danilo Rivera."[5] The report concluded on this note: "In view of respondent's evidence, which is credible, and considering the motion to dismiss filed by complainant Belen A. Rivera, there is no basis for further proceeding against respondent Orlando A. Latonero under Sec. 27, Rule 138 of the Rules of Court."[6]

It follows that the recommendation would be for the dismissal of the complaint against respondent.

This Court is in agreement. An excerpt from *In re Tionko*,[7] sets forth the authoritative doctrine. Thus: "The serious consequences of disbarment or suspension should follow only when there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath."[8] The case for respondent is much stronger. The testimony in support of his allegation that the parties appeared before him came from a source other than himself. It sufficed apparently for complainant to seek the dismissal of the charges after hearing such testimony. Nonetheless, the investigation continued. It became even clearer that an adverse finding against respondent would not at all be justified.

WHEREFORE, the complaint for disbarment against respondent Orlando Latonero 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., no part.

[1] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Santiago M. Kapunan and Solicitor Oswaldo D. Agcaoili.

[2] Report, 4-5.

[3] *Ibid*, 5.

[4] *Ibid*.

[5] *Ibid*, 6.

[6] *Ibid*.

[7] 43 Phil. 191 (1922).

[8] Ibid, 194. Such a doctrine was cited with approval, according to *Atienza v. Evangelista*, Adm. Case No. 1517, November 29, 1977, 80 SCRA 338, in nine subsequent 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, Oct. 19, 1967, 21 SCRA 438, and *Adorne v. Aldava*, a 1978 decision, Case No. 801, June 27, 1978, 83 SCRA 734, may likewise be cited to show the continued adherence to such a principle.

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