

FELICIDAD BARIÑAN TAN, COMPLAINANT, VS. ATTY. GALILEO J. TROCIO, RESPONDENT.*A.C. No. 2115. November 27, 1990*

Ponente: MELENCIO-HERRERA, J.

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In a verified complaint, filed on 9 November 1979, complainant Felicidad Bariñan Tan seeks the disbarment of respondent Atty. Galileo J. Trocio for immorality and conduct unbecoming of a lawyer.

Complainant, owner and directress of Harlyn Vocational School in Baroy, Lanao del Norte, declares that sometime in April, 1971, at about 8:30 PM, after classes were dismissed, respondent, who is the legal counsel of the school, overpowered her inside the office and, against her will, succeeded in having carnal knowledge of her. As a result, she begot a son on 5 February 1972 whom she named and registered as Jewel Tan. She avers that respondent used to support Jewel but subsequently lost interest in doing so thereby neglecting to defray the needed expenses for Jewel's well-being. Complainant also alleges that the respondent threatened her with the deportation of her alien husband if she complained to the authorities since she was violating the Anti-Dummy Law in operating the vocational school. This threat, aside from the fact that Complainant is a married woman with eight children and a school directress at the time of the sexual assault, made her desist from filing a charge against the respondent. However, after eight years and thorough soul-searching, she decided to file this administrative complaint.

Respondent, in his Answer, admits having acted as a lawyer of the vocational school. In fact, he contends that he had also served as the lawyer of the Complainant, her family and her parents-in-law. Thus, in 1971, he helped prosecute a case for robbery committed against Complainant's mother and sisters. Also, in March of 1976, when a fire of unknown origin gutted the school, he assisted the complainant in collecting P10,000.00 from FGU Insurance Group, and P40,000.00 from Fortune Insurance Corporation as indemnities. With regard to the same case, he also represented complainant in a suit involving a P130,000.00 claim against the Workmen's Insurance Corporation before the then Court of First Instance of Lanao del Norte. Then in 1978, he was retained as a collaborating attorney by Complainant's family in an inheritance case. Further, her father-in-law had always consulted him in matters affecting the former's store.

But respondent vehemently denies that he had sexually assaulted the Complainant. He argues that her motivation in filing this charge was to get even with him after having been humiliated when he declined her request to commit a "breach of trust." He states that in the inheritance case he handled for her family, Complainant insisted that he report to her mother and sisters that he had charged a fee of P15,000.00 instead of the P2,500.00 he actually received so that she could pocket the difference. He refused and told the Complainant to look for another lawyer. She tried twice to make peace with him but was unsuccessful. Rebuffed, she promised to get even with him. Thus, this complaint.

Another reason why Complainant filed the present case, respondent claims, is to escape her indebtedness to him

representing his services as legal counsel of the school which were unpaid since 1974 and the accumulated honoraria from her fire insurance claims. These obligations were left unpaid despite demand made when respondent learned that Complainant had sold a piece of land in Agusan.

On 2 June 1980, the Court, acting upon the Complaint and the Answer already filed, referred the case to the Office of the Solicitor General for investigation, report and recommendation.

On 19 August 1980, said Office, upon the request of the Complaint that the investigation be held in Lanao del Norte as she and her witnesses could not afford to come to Manila, referred the case to the Provincial Fiscal of said province for the necessary proceedings.

Between September and October of 1980, hearings were conducted on the case. In a Report and Recommendation, dated 16 January 1981, the Provincial Fiscal stated that respondent failed to attend the hearing despite the issuance of subpoenae; that there was prima facie evidence showing that respondent had committed acts violative of his professional decorum; and, that he was recommending disciplinary action against him. The records of the case were then forwarded to the Office of the Solicitor General.

On 1 September 1982, the Office of the Solicitor General returned the records to the Provincial Fiscal of Lanao del Norte for re-investigation on the ground that the investigation was conducted in the absence of respondent, who did not appear despite subpoenas sent to him. Thus, further proceedings were conducted by the Provincial Fiscal wherein Respondent was allowed to submit a sworn letter, dated 13 December 1985, amplifying on the defenses contained in his Answer.

On 13 February 1986, the Provincial Fiscal of Lanao del Norte issued a Resolution adopting his previous Report and Recommendation of 16 January 1981, which found prima facie evidence to hold Respondent administratively liable. On the same day, the records of the case were referred back to the Office of the Solicitor General.

On 16 May 1986, the Office of the Solicitor General came up with its own Report recommending that Respondent be disbarred for gross immoral conduct. On 17 July 1986, as directed by the Court, the Solicitor General filed a formal Complaint for disbarment against Respondent. On 29 May 1990, the case was raffled to this Second Division and was included in the latter's agenda on 13 June 1990.

Respondent has filed an Answer, Complainant her Reply, while Respondent's Rejoinder, as required by the Court, was received on 3 October 1990. The required pleadings being complete, this case is now ripe for resolution.

The issue for determination is whether or not Respondent should be disbarred for immoral conduct. This in turn, hinges on the question of whether he had, in fact, sexually assaulted the Complainant as a consequence of which the latter begot a child by him.

We find insufficient basis to sustain Complainant's charge.

The outrage allegedly took place during the last week of April, 1971. Yet, no criminal charge was filed, and it was only about eight years later, on 5 November 1979, that an administrative complaint was presented before this Court. Complainant's explanation that Respondent's threat to cause the deportation of her alien husband should she report to anyone made her desist from filing a charge is not credible as she had admitted having lost contact with her husband when he learned of respondent's transgression that very same evening (p. 3, TSN, 16 October 1980, p. 46, Rollo). The fear that she speaks of, therefore, had become inexistent.

Another factor that engenders doubt in the mind of the Court is the fact that after the alleged incident, she continued having dealings with the Respondent as if nothing had happened. Thus, by Respondent's own account, which was left uncontroverted by the Complainant, the former assisted her mother and sisters prosecute a robbery

case. Then in March, 1976, she secured respondent's services in claiming indemnity from three insurance companies when a fire burned the school down. Finally, respondent was retained as a collaborating attorney by complainant's family in an inheritance case. These subsequent dealings are far from being the normal reaction of a woman who has been wronged.

Complainant's contention that Respondent continued supporting the child for several years for which reason she desisted from charging him criminally, has not been substantiated. Truth to tell, the fact that she kept her peace for so many years can even be construed as a condonation of his alleged "immoral conduct." It is likewise strange that an unwanted son, as the child would normally have been, should, of all names, be called "Jewel."

During the investigation before the Provincial Fiscal, the complainant, aside from herself, presented two other witnesses, Eleuteria Garcia and Marilou Pangandaman, both her domestic help, to testify. Among the three, it was Eleuteria who tried to establish the manner in which the sexual assault took place. Thus:

"xxx

"Q - You stated in your affidavit marked Annex A that you heard Felicidad Bariñan Tan shouted (sic) for help on the evening of last week of April, 1971, can you tell me or do you know why Mrs. Tan shouted for help?

"A - Yes sir. When I responded to the shout for help of Tan I noticed that Atty. Galileo Trocio hurriedly left the office leaving behind Mrs. Felicidad Bariñan Tan.

"Q - Did you ask Mrs. Felicidad Bariñan Tan why she was shouting for help?

"A - Before I could ask her the reason why she shouted for help, she told me and Marilou Pangandaman that she was sexually abused by Atty. Galileo J. Trocio.

"Q - What did you notice of Mrs. Felicidad Bariñan Tan when you responded to her shout for help?

"A - She was crying and trying to fix her dress.

"xxx (p. 52-53, Rollo)."

However, how near to the crime scene said witness was, considering that it allegedly happened in school premises, has not been shown. Her credibility is thus also put in issue.

The testimonies of Complainant and witness Marilou Pangandaman, another maid, to show unusual closeness between Respondent and Jewel, like playing with him and giving him toys, are not convincing enough to prove paternity, as Complainant would want us to believe. The same must be said of Exhibits A, A1, B and B1, which are pictures of Jewel and the Respondent showing allegedly their physical likeness to each other. Such evidence is inconclusive to prove paternity, and much less would it prove violation of Complainant's person and honor.

More importantly, Jewel Tan was born in 1972, during wedlock of Complainant and her husband and the presumption should be in favor of legitimacy unless physical access between the couple was impossible. From the evidence on hand, that presumption has not been overcome by adequate and convincing proof. In fact, Jewel was registered in his birth certificate as the legitimate child of the Complainant and her husband, Tan Le Pok.

WHEREFORE, this Complaint for disbarment must be, and is hereby DISMISSED, for lack of convincing substantiation.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

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