

BENITO SACO, COMPLAINANT, VS. DONATO A. CARDONA, RESPONDENT.

A.C. No. 301. May 18, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Administrative complaint against a lawyer for misconduct, for having allegedly misappropriated or converted money belonging to his client.

It is not disputed that the herein complainant, Benito Saco, while a member of the municipal police force of Borongan, Samar, was charged with the offense of Infidelity in the custody of prisoner before the Court of First Instance of Samar. As a consequence of the filing of the case, Benito Saco was suspended from his position, effective May 16, 1954. After trial of the case, where the accused was assisted by herein respondent, Atty. Donato A. Cardona, as counsel, Benito Saco was acquitted.[1] The decision, however, did not include payment of back salaries. So, a motion for reconsideration was filed,[2] and on November 17, 1955, the court amended its decision so as to entitle the accused Benito Saco to collect his back salaries corresponding to the period of his suspension,[3] which amounted to P903.33.

Two years later, or on May 31, 1957, Benito Saco complained to the Court that the respondent had cheated him by misappropriating the amount of P601.22 due him as his share in the amount collected as back salaries since their agreement was that the respondent will get only 1/3 of the amount corresponding to his back salaries for his professional services.[4]

Required to answer, the respondent stated that their agreement was for the complainant to get 1/3 of the money collected, minus 10% thereof for expenses in collecting the same; and that he had already given the complainant the amount of P220.00 pursuant to such sharing agreement.[5]

The matter was referred to the Solicitor General, for investigation, report and recommendation, who, in turn, endorsed the case to the Provincial Fiscal of Samar.

The Provincial Fiscal, after hearing the parties, submitted his Report,[6] stating among others, that "In the face of these contradictory versions as to the real contract respecting the sharing of the amount of P903.33 between the two parties this investigator is inclined to believe that the version of Atty. Cardona is more credible considering the fact that these two alleged versions are all verbal and further considering the credibility of the witness who testified in this investigation," and, therefore, no merit in the charge that the respondent has misappropriated funds belonging to his client. Nevertheless, the Solicitor General filed a complaint against the respondent, recommending his suspension from the practice of law for 2 years,[7] for the reason that there is sincerity in the testimony of the complainant and the respondent is guilty of the charge against him.[8]

The respondent filed his answer thereto, reiterating his claim that the agreement between them is that the complainant shall receive 1/3 of whatever money may be collected, less 10% of the amount as expenses for

collecting the same, which has already been fully satisfied.[9] In further support of his claim, he submitted an affidavit, executed by the complainant, to the effect that complainant is satisfied with the findings of the Provincial Fiscal and no longer interested in the prosecution of the case.[10]

As will be seen, the determination of the issue of misconduct is dependent upon the sharing agreement entered into by and between the parties. Both claim that each one is entitled to 2/3 of the money collected. The evidence presented by them, however, is not conclusive since their agreement was not put in writing. But, in view of the affidavit of the complainant, as well as of the findings of the Provincial Fiscal of Samar, who personally heard the parties and their witnesses, that the testimony of the witnesses for the respondent are more credible, it can be rationally inferred that the complainant had consented to give 2/3 of the money to the respondent as his professional fees. The respondent is, therefore, not guilty of misconduct.

WHEREFORE, the complaint should be, as it is hereby, DISMISSED.

SO ORDERED.

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

Antonio, J., took no part.

[1] Rollo, p. 22.

[2] Id., p. 24.

[3] Id., p. 25.

[4] Id., p. 4.

[5] Id., p. 6.

[6] Id., p. 7.

[7] Id., p. 26.

[8] Id., pp. 29, 34.

[9] Id., p. 108.

[10] Id., p. 116.

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