

IN RE: DISBARMENT PROCEEDINGS AGAINST ATTY. DIOSDADO Q. GUTIERREZ, RESPONDENT.*A.C. No. 363. July 31, 1962*

Ponente: MAKALINTAL, J.

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Respondent Diosdado Q. Gutierrez is a member of the Philippine Bar, admitted to it on October 5, 1945. In criminal case No. R-793 of the Court of First Instance of Oriental Mindoro he was convicted of the murder of Filemon Samaco, former municipal mayor of Calapan, and together with his co-conspirators was sentenced to the penalty of death. Upon review by this Court the judgment of conviction was affirmed on June 30, 1956 (G. R. No. L-7101), but the penalty was changed to reclusion perpetua. After serving a portion of the sentence respondent was granted a conditional pardon by the President on August 19, 1958. The unexecuted portion of the prison term was remitted "on condition that he shall not again violate any of the penal laws of the Philippines."

On October 9, 1958 the widow of the deceased Filemon Samaco, victim in the murder case, filed a verified complaint before this Court praying that respondent be removed from the roll of lawyers pursuant to Rule 127, section 5. Respondent presented his answer in due time, admitting the facts alleged by complainant regarding his previous conviction but pleading the conditional pardon in defense, on the authority of the decision of this Court in the case of *In re Lontok*, 43 Phil. 293.

Under section 5 of Rule 127 a member of the bar may be removed or suspended from his office as attorney by the Supreme Court by reason of his conviction of a crime involving moral turpitude. Murder is, without doubt, such a crime. The term "moral turpitude" includes everything which is done contrary to justice, honesty, modesty or good morals. *In re Carlos S. Basa*, 41 Phil. 275. As used in disbarment statutes, it means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man. *State ex rel. Conklin vs. Buckingham*, 84 P. 2nd 49; 5 Am. Jur. Sec. 279, pp. 428-429.

The only question to be resolved is whether or not the conditional pardon extended to respondent places him beyond the scope of the rule on disbarment aforecited. Reliance is placed by him squarely on the *Lontok* case. The respondent therein was convicted of bigamy and thereafter pardoned by the Governor-General. In a subsequent proceeding for his disbarment on the ground of such conviction, this Court decided in his favor and held: "When proceedings to strike on attorney's name from the rolls are founded on, and depend alone, on a statute making the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted."

It is our view that the ruling does not govern the question now before us. In making it the Court proceeded on the assumption that the pardon granted to respondent *Lontok* was absolute. This is implicit in the *ratio decidendi* of the case, particularly in the citations to support it, namely, *In re Emmons*, 29 Cal. App. 121; *Scott vs. State* 6 Tex.

Civ. App. 343; and *Ex parte Garland*, 4 Wall. 380. Thus in *Scott vs. State* the court said:

"We are of the opinion that after he received an unconditional pardon the record of the felony conviction could no longer be used as a basis for the proceeding provided for in article 226. This record, when offered in evidence, was met with an unconditional pardon, and could not therefore, properly be said to afford "proof of a conviction of any felony." Having been thus cancelled, all its force as a felony conviction was taken away. A pardon falling short of this would not be pardon, according to the judicial construction which that act of executive grace was received. *Ex parte Garland*, 4 Wall, 344; *Knote vs. U.S.* 95 U.S. 149, and cases there cited; *Young vs. Young*, 61 Tex, 191."

And the portion of the decision in *Ex parte Garland* quoted with approval in the *Lontok* case is as follows:

"A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eyes of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."

The pardon granted to respondent here is not absolute but conditional, and merely remitted the unexecuted portion of his term. It does not reach the offense itself, unlike that in *Ex parte Garland*, which was "a full pardon and amnesty for all offenses by him committed in connection with the rebellion (civil war) against the government of the United States."

The foregoing considerations render *In re Lontok* in applicable here. Respondent Gutierrez must be judged upon the fact of his conviction for murder without regard to the pardon he invokes in defense. The crime was qualified by treachery and aggravated by its having been committed in band, by taking advantage of his official position (respondent being municipal mayor at the time) and with the use of a motor vehicle. *People vs. Diosdado Gutierrez*, *supra*. The degree of moral turpitude involved is such as to justify his being purged from the profession.

The practice of law is a privilege accorded only to those who measure up to certain rigid standards of mental and moral fitness. For the admission of a candidate to the bar the Rules of Court not only prescribe a test of academic preparation but require satisfactory testimonials of good moral character. These standards are neither dispensed with nor lowered after admission; the lawyer must continue to adhere to them or else incur the risk of suspension or removal. As stated in *Ex parte Wall*, 107 U.S. 263, 27 Law ed., 552, 556; "Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic."

Wherefore, pursuant to Rule 127, Section 5, and considering the nature of the crime for which respondent Diosdado Q. Gutierrez has been convicted, he is ordered disbarred and his name stricken from the roll of lawyers.

Bengzon, C. J., Labrador, Concepcion, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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