

ATTY. OSCAR L. EMBIDO, REGIONAL DIRECTOR, NATIONAL BUREAU OF INVESTIGATION, WESTERN VISAYAS, REGIONAL OFFICE (NBI-WEVRO), FOR SAN PEDRO, ILOILO CITY, COMPLAINANT, VS. ATTY. SALV...

A.C. No. 6732. October 22, 2013

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

A lawyer who forges a court decision and represents it as that of a court of law is guilty of the gravest misconduct and deserves the supreme penalty of disbarment.

The Case

Before this Court is the complaint for disbarment against Assistant Provincial Prosecutor Atty. Salvador N. Pe, Jr. (respondent) of San Jose, Antique for his having allegedly falsified an inexistent decision of Branch 64 of the Regional Trial Court stationed in Bugasong, Antique (RTC) instituted by the National Bureau of Investigation (NBI), Western Visayas Regional Office, represented by Regional Director Atty. Oscar L. Embido.

Antecedent

On July 7, 2004, Atty. Ronel F. Sustituya, Clerk of Court of the RTC, received a written communication from Mr. Ballam Delaney Hunt, a Solicitor in the United Kingdom (UK). The letter requested a copy of the decision dated February 12, 1997 rendered by Judge Rafael O. Penuela in Special Proceedings Case No. 084 entitled In the Matter of the Declaration of Presumptive Death of Rey Laserna, whose petitioner was one Shirley Quioyo.[1]

On September 9, 2004, the RTC received another letter from Mr. Hunt, reiterating the request for a copy of the decision in Special Proceedings Case No. 084 entitled In the Matter of the Declaration of Presumptive Death of Rey Laserna.[2]

Judge Penuela instructed the civil docket clerk to retrieve the records of Special Proceedings Case No. 084 entitled In the Matter of the Declaration of Presumptive Death of Rey Laserna. It was then discovered that the RTC had no record of Special Proceedings No. 084 wherein Shirley Quioyo was the petitioner. Instead, the court files revealed that Judge Penuela had decided Special Proceedings No. 084 entitled In the Matter of the Declaration of Presumptive Death of Rolando Austria, whose petitioner was one Serena Catin Austria.

Informed that the requested decision and case records did not exist,[3] Mr. Hunt sent a letter dated October 12, 2004 attaching a machine copy of the purported decision in Special Proceedings No. 084 entitled In the Matter of the Declaration of Presumptive Death of Rey Laserna that had been presented by Shirley Quioyo in court proceedings in the UK.[4]

After comparing the two documents and ascertaining that the document attached to the October 12, 2004 letter was a falsified court document, Judge Penuela wrote Mr. Hunt to apprise him of the situation.[5]

The discovery of the falsified decision prompted the Clerk of Court to communicate on the situation in writing to the NBI, triggering the investigation of the falsification.[6]

In the meanwhile, Dy Quioyo, a brother of Shirley Quioyo, executed an affidavit on March 4, 2005,[7] wherein he stated that it was the respondent who had facilitated the issuance of the falsified decision in Special Proceedings No. 084 entitled In the Matter of the Declaration of Presumptive Death of Rey Laserna for a fee of P60,000.00. The allegations against the respondent were substantially corroborated by Mary Rose Quioyo, a sister of Shirley Quioyo, in an affidavit dated March 20, 2005.[8]

The NBI invited the respondent to explain his side,[9] but he invoked his constitutional right to remain silent. The NBI also issued subpoenas to Shirley Quioyo and Dy Quioyo but only the latter appeared and gave his sworn statement.

After conducting its investigation, the NBI forwarded to the Office of the Ombudsman for Visayas the records of the investigation, with a recommendation that the respondent be prosecuted for falsification of public document under Article 171, 1 and 2, of the Revised Penal Code, and for violation of Section 3(a) of Republic Act 3019 (The Anti-Graft and Corrupt Practices Act).[10] The NBI likewise recommended to the Office of the Court Administrator that disbarment proceedings be commenced against the respondent.[11] Then Court Administrator Presbitero J. Velasco, Jr. (now a Member of the Court) officially endorsed the recommendation to the Office of the Bar Confidant.[12]

Upon being required by the Court, the respondent submitted his counter-affidavit,[13] whereby he denied any participation in the falsification. He insisted that Dy Quioyo had sought his opinion on Shirley's petition for the annulment of her marriage; that he had given advice on the pertinent laws involved and the different grounds for the annulment of marriage; that in June 2004, Dy Quioyo had gone back to him to present a copy of what appeared to be a court decision;[14] that Dy Quioyo had then admitted to him that he had caused the falsification of the decision; that he had advised Dy Quioyo that the falsified decision would not hold up in an investigation; that Dy Quioyo, an overseas Filipino worker (OFW), had previously resorted to people on Recto Avenue in Manila to solve his documentation problems as an OFW; and that he had also learned from Atty. Angeles Orquia, Jr. that one Mrs. Florencia Jalipa, a resident of Igbalangao, Bugasong, Antique, had executed a sworn statement before Police Investigator Herminio Dayrit with the assistance of Atty. Orquia, Jr. to the effect that her late husband, Manuel Jalipa, had been responsible for making the falsified document at the instance of Dy Quioyo.[15]

Thereafter, the Court issued its resolution[16] treating the respondent's counter-affidavit as his comment, and referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The IBP's Report and Recommendation

In a report and recommendation dated June 14, 2006,[17] Atty. Lolita A. Quisumbing, the IBP Investigating Commissioner, found the respondent guilty of serious misconduct and violations of the Attorney's Oath and Code of Professional Responsibility, and recommended his suspension from the practice of law for one year. She concluded that the respondent had forged the purported decision of Judge Penuela by making it appear that Special Proceedings No. 084 concerned a petition for declaration of presumptive death of Rey Laserna, with Shirley Quioyo as the petitioner, when in truth and in fact the proceedings related to the petition for declaration of presumptive death of Rolando Austria, with Serena Catin Austria as the petitioner;[18] and that the respondent had received P60,000.00 from Dy Quioyo for the falsified decision. She rationalized her conclusions thusly:

Respondent's denials are not worthy of merit. Respondent contends that it was one Manuel Jalipa (deceased) who facilitated the issuance and as proof thereof, he presented the sworn statement of the widow of Florencia

Jalipa (sic). Such a contention is hard to believe. In the first place, if the decision was obtained in Recto, Manila, why was it an almost verbatim reproduction of the authentic decision on file in Judge Penuela's branch except for the names and dates? Respondent failed to explain this. Secondly, respondent did not attend the NBI investigation and merely invoked his right to remain silent. If his side of the story were true, he should have made this known in the investigation. His story therefore appears to have been a mere afterthought. Finally, there is no plausible reason why Dy Quioyo and his sister, Mary Rose Quioyo would falsely implicate him in this incident.[19]

In its Resolution No. XVII-2007-063 dated February 1, 2007,[20] the IBP Board of Governors adopted and approved, with modification, the report and recommendation of the Investigating Commissioner by suspending the respondent from the practice of law for six years.

On December 11, 2008, the IBP Board of Governors passed Resolution No. XVIII-2008-709[21] denying the respondent's motion for reconsideration and affirming Resolution No. XVII-2007-063. The IBP Board of Governors then forwarded the case to the Court in accordance with Section 12(b), Rule 139-B[22] of the Rules of Court.

On January 11, 2011, the Court resolved: (1) to treat the respondent's comment/opposition as his appeal by petition for review; (2) to consider the complainant's reply as his comment on the petition for review; (3) to require the respondent to file a reply to the complainant's comment within 10 days from notice; and (4) to direct the IBP to transmit the original records of the case within 15 days from notice.

Ruling

We affirm the findings of the IBP Board of Governors. Indeed, the respondent was guilty of grave misconduct for falsifying a court decision in consideration of a sum of money.

The respondent's main defense consisted in blanket denial of the imputation. He insisted that he had had no hand in the falsification, and claimed that the falsification had been the handiwork of Dy Quioyo. He implied that Dy Quioyo had resorted to the shady characters in Recto Avenue in Manila to resolve the problems he had encountered as an OFW, hinting that Dy Quioyo had a history of employing unscrupulous means to achieve his ends.

However, the respondent's denial and his implication against Dy Quioyo in the illicit generation of the falsified decision are not persuasive. Dy Quioyo's categorical declaration on the respondent's personal responsibility for the falsified decision, which by nature was positive evidence, was not overcome by the respondent's blanket denial, which by nature was negative evidence.[23] Also, the imputation of wrongdoing against Dy Quioyo lacked credible specifics and did not command credence. It is worthy to note, too, that the respondent filed his counter-affidavit only after the Court, through the en banc resolution of May 10, 2005, had required him to comment.[24] The belatedness of his response exposed his blanket denial as nothing more than an afterthought.

The respondent relied on the sworn statement supposedly executed by Mrs. Jalipa that declared that her deceased husband had been instrumental in the falsification of the forged decision. But such reliance was outrightly worthless, for the sworn statement of the wife was rendered unreliable due to its patently hearsay character. In addition, the unworthiness of the sworn statement as proof of authorship of the falsification by the husband is immediately exposed and betrayed by the falsified decision being an almost verbatim reproduction of the authentic decision penned by Judge Penuela in the real Special Proceedings Case No. 084.

In light of the established circumstances, the respondent was guilty of grave misconduct for having authored the falsification of the decision in a non-existent court proceeding. Canon 7 of the Code of Professional Responsibility demands that all lawyers should uphold at all times the dignity and integrity of the Legal

Profession. Rule 7.03 of the Code of Professional Responsibility states that “a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.” Lawyers are further required by Rule 1.01 of the Code of Professional Responsibility not to engage in any unlawful, dishonest and immoral or deceitful conduct.

Gross immorality, conviction of a crime involving moral turpitude, or fraudulent transactions can justify a lawyer’s disbarment or suspension from the practice of law.[25] Specifically, the deliberate falsification of the court decision by the respondent was an act that reflected a high degree of moral turpitude on his part. Worse, the act made a mockery of the administration of justice in this country, given the purpose of the falsification, which was to mislead a foreign tribunal on the personal status of a person. He thereby became unworthy of continuing as a member of the Bar.

It then becomes timely to remind all members of the Philippine Bar that they should do nothing that may in any way or degree lessen the confidence of the public in their professional fidelity and integrity.[26] The Court will not hesitate to wield its heavy hand of discipline on those among them who wittingly and willingly fail to meet the enduring demands of their Attorney’s Oath for them to:

x x x support [the] Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; xxx do no falsehood, nor consent to the doing of any in court; x x x not wittingly or willingly promote or sue on groundless, false or unlawful suit, nor give aid nor consent to the same; x x x delay no man for money or malice, and x x x conduct [themselves as lawyers] according to the best of [their] knowledge and discretion with all good fidelity as well to the courts as to [their] clients x x x.

No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer’s Oath and the canons of ethical conduct in his professional and private capacities. He may be disbarred or suspended from the practice of law not only for acts and omissions of malpractice and for dishonesty in his professional dealings, but also for gross misconduct not directly connected with his professional duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him.[27] Verily, no lawyer is immune from the disciplinary authority of the Court whose duty and obligation are to investigate and punish lawyer misconduct committed either in a professional or private capacity.[28] The test is whether the conduct shows the lawyer to be wanting in moral character, honesty, probity, and good demeanor, and whether the conduct renders the lawyer unworthy to continue as an officer of the Court.[29]

WHEREFORE, the Court FINDS AND PRONOUNCES ASST. PROVINCIAL PROSECUTOR SALVADOR N. PE, JR. guilty of violating Rule 1.01 of Canon 1, and Rule 7.03 of Canon 7 of the Code of Professional Responsibility, and DISBARS him effective upon receipt of this decision.

The Court DIRECTS the Bar Confidant to remove the name of ASST. PROVINCIAL PROSECUTOR SALVADOR N. PE, JR. from the Roll of Attorneys.

This decision is without prejudice to any pending or contemplated proceedings to be initiated against ASST. PROVINCIAL PROSECUTOR SALVADOR N. PE, JR.

Let copies of this decision be furnished to the Office of the Bar Confidant, the Office of the Court Administrator for dissemination to all courts of the country, and to the Integrated Bar of the Philippines.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.

Del Castillo, J., on leave.

[1] Rollo, Vol. I, p. 8.

[2] Id.

[3] Id. at 22.

[4] Id. at 23-28.

[5] Id. at 33-34.

[6] Id. at 12-13.

[7] Id. at 55.

[8] Id. at 56.

[9] Id. at 58.

[10] Id. at 8-11.

[11] Id. at 7.

[12] Id. at 6.

[13] Id. at 64-67.

[14] Id. at 65.

[15] Id. at 67.

[16] Id. at 72.

[17] Rollo, Vol. III, pp. 84-89.

[18] Id. at 87.

[19] Id.

[20] Id. at 82.

[21] Id. at 98.

[22] Section 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

[23] *People v. Biago*, G.R. No. 54411, February 21, 1990, 182 SCRA 411, 418.

[24] Rollo, Vol. I, p. 62.

[25] Agpalo, *Comments on the Code of Professional Responsibility and the Code of Judicial Conduct*, p. 62

(2001).

[26] Sipin-Nabor v. Bateria, A.C. No. 4073, June 28, 2001, 360 SCRA 6, 10.

[27] Lizaso v. Amante, A.C. No. 2019, June 3, 1991, 198 SCRA 1, 10; citing *In Re Vicente Pelaez*, 44 Phil. 567 (1923).

[28] Tan, Jr. v. Gumba, A.C. No. 9000, October 5, 2011, 658 SCRA 527, 532.

[29] Roa v. Moreno, A.C. No. 8382, April 21, 2010, 618 SCRA 693, 699, citing *Ronquillo v. Cezar*, A.C. No. 6288, June 16, 2006, 491 SCRA 1, 5-6.

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