

RE : SUSPENSION OF ATTY. ROGELIO Z. BAGABUYO, FORMER SENIOR STATE PROSECUTOR

A.C. No. 7006. October 09, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This administrative case stemmed from the events of the proceedings in Crim. Case No. 5144, entitled *People v. Luis Bucalon Plaza*, heard before the sala of Presiding Judge Jose Manuel P. Tan, Regional Trial Court (RTC) of Surigao City, Branch 29.

Crim. Case No. 5144 was originally raffled to the sala of Judge Floripinas C. Buyser, RTC of Surigao City, Branch 30. In an Order dated March 14, 2002, Judge Buyser denied the Demurrer to the Evidence of the accused, declaring that the evidence thus presented by the prosecution was sufficient to prove the crime of homicide and not the charge of murder. Consequently, the counsel for the defense filed a Motion to Fix the Amount of Bail Bond. Respondent Atty. Rogelio Z. Bagabuyo, then Senior State Prosecutor and the deputized prosecutor of the case, objected thereto mainly on the ground that the original charge of murder, punishable with reclusion perpetua, was not subject to bail under Sec. 4, Rule 114 of the Rules of Court.[1]

In an Order dated August 30, 2002,[2] Judge Buyser inhibited himself from further trying the case because of the “harsh insinuation” of Senior Prosecutor Rogelio Z. Bagabuyo that he “lacks the cold neutrality of an impartial magistrate,” by allegedly suggesting the filing of the motion to fix the amount of bail bond by counsel for the accused.

The case was transferred to Branch 29 of the RTC of Surigao City, presided by Judge Jose Manuel P. Tan. In an Order dated November 12, 2002, Judge Tan favorably resolved the Motion to Fix the Amount of Bail Bond, and fixed the amount of the bond at P40,000.

Respondent filed a motion for reconsideration of the Order dated November 12, 2002, which motion was denied for lack of merit in an Order dated February 10, 2003. In October, 2003, respondent appealed from the Orders dated November 12, 2002 and February 10, 2003, to the Court of Appeals (CA).

Instead of availing himself only of judicial remedies, respondent caused the publication of an article regarding the Order granting bail to the accused in the August 18, 2003 issue of the *Mindanao Gold Star Daily*. The article, entitled “Senior prosecutor lambasts Surigao judge for allowing murder suspect to bail out,” reads:

SENIOR state prosecutor has lashed at a judge in Surigao City for allowing a murder suspect to go out on bail.

Senior state prosecutor Rogelio Bagabuyo lambasted Judge Manuel Tan of the Regional Trial Court (RTC) Branch 29 based in Surigao City for ruling on a motion that sought a bailbond for Luis Plaza who stands charged with murdering a policeman

Plaza reportedly posted a P40-thousand bail bond.

Bagabuyo argued that the crime of murder is a non-bailable offense. But Bagabuyo admitted that a judge could still opt to allow a murder suspect to bail out in cases when the evidence of the prosecution is weak.

But in this murder case, Bagabuyo said the judge who previously handled it, Judge F[lori]pinas B[uy]ser, described the evidence to be strong. B[uy]ser inhibited from the case for an unclear reason.

x x x

Bagabuyo said he would contest Tan's decision before the Court of Appeals and would file criminal and administrative charges of certiorari against the judge.

Bagabuyo said he was not afraid of being cited in contempt by Judge Tan.

"This is the only way that the public would know that there are judges there who are displaying judicial arrogance," he said.[3]

In an Order dated August 21, 2003, the RTC of Surigao City, Branch 29, directed respondent and the writer of the article, Mark Francisco of the Mindanao Gold Star Daily, to appear in court on September 20, 2003 to explain why they should not be cited for indirect contempt of court for the publication of the article which degraded the court and its presiding judge with its lies and misrepresentation.

The said Order stated that contrary to the statements in the article, Judge Buyser described the evidence for the prosecution as not strong, but sufficient to prove the guilt of the accused only for homicide. Moreover, it was not true that Judge Buyser inhibited himself from the case for an unclear reason. Judge Buyser, in an Order dated August 30, 2002, declared in open court in the presence of respondent that he was inhibiting himself from the case due to the harsh insinuation of respondent that he lacked the cold neutrality of an impartial judge.

On the scheduled hearing of the contempt charge, Mark Francisco admitted that the Mindanao Gold Star Daily caused the publication of the article. He disclosed that respondent, in a press conference, stated that the crime of murder is non-bailable. When asked by the trial court why he printed such lies, Mr. Francisco answered that his only source was respondent.[4] Mr. Francisco clarified that in the statement alleging that Judge Buyser inhibited himself from the case for an unclear reason, the phrase "for an unclear reason," was added by the newspaper's Executive Editor Herby S. Gomez.[5]

Respondent admitted that he caused the holding of the press conference, but refused to answer whether he made the statements in the article until after he shall have filed a motion to dismiss. For his refusal to answer, the trial court declared him in contempt of court pursuant to Sec. 3, Rule 71 of the Rules of Court.[6] The Court's Order dated September 30, 2003 reads:

ORDER

Mr. Mark Francisco for publishing this article which is a lie clothed in half truth to give it a semblance of truth is hereby ordered to pay a fine of P10,000. Prosecutor Bagabuyo, for obstinately refusing to explain why he should not be cited for contempt and admitting that the article published in the Mindanao Gold Star Daily on August 18, 2003 and quoted in the Order of this Court dated August 21, 2003 which is contemptuous was caused by him to be published, is hereby adjudged to have committed indirect contempt of Court pursuant to Section 3 of Rule 71 of the Rules of Court and he is hereby ordered to suffer the penalty of 30 days in jail. The BJMP is hereby ordered to arrest Prosecutor Rogelio Z. Bagabuyo if he does not put up a bond of P100,000.00.

SO ORDERD.[7]

Respondent posted the required bond and was released from the custody of the law. He appealed the indirect contempt order to the CA.

Despite the citation of indirect contempt, respondent presented himself to the media for interviews in Radio Station DXKS, and again attacked the integrity of Judge Tan and the trial court's disposition in the proceedings of Crim. Case No. 5144.

In an Order dated October 20, 2003, the RTC of Surigao City, Branch 29, required respondent to explain and to show cause within five days from receipt thereof why he should not be held in contempt for his media interviews that degraded the court and the presiding judge, and why he should not be suspended from the practice of law for violating the Code of Professional Responsibility, specifically Rule 11.05 of Canon 11[8] and Rule 13.02 of Canon 13.[9]

In the Order, the trial court stated that respondent was interviewed by Jun Clergio, and that the interview was repeatedly aired on September 30, 2003 and in his news program between 6:00 and 8:00 a.m. on October 1, 2003. He was also interviewed by Tony Consing on October 1 and 2, 2003, between 8:00 and 9:00 a.m. in his radio program. In those radio interviews, respondent allegedly called Judge Tan a judge who does not know the law, a liar, and a dictator who does not accord due process to the people.

The hearing for the second contempt charge was set on December 4, 2003.

On November, 20, 2003, respondent filed an Urgent Motion for Extension of Time to File Answer to Contempt alleging that he was saddled with work of equal importance and needed ample time to answer the same. He also prayed for a bill of particulars in order to properly prepare for his defense.

In an Order dated November 20, 2003, the trial court denied the motion. It stated that a bill of particulars is not applicable in contempt proceedings, and that respondent's actions and statements are detailed in the Order of October 20, 2003.

On the scheduled hearing of December 4, 2003 respondent neither appeared in court nor informed the court of his absence. The trial court issued an Order dated December 4, 2003 cancelling the hearing "to give Prosecutor Bagabuyo all the chances he asks for," and ordered him to appear on January 12, 2004 to explain in writing or orally why he should not be cited in contempt of court pursuant to the facts stated in the Order dated October 20, 2003. However, respondent did not appear in the scheduled hearing of January 12, 2004.

On January 15, 2004, the trial court received respondent's Answer dated January 8, 2004. Respondent denied the charge that he sought to be interviewed by radio station DXKS. He, however, stated that right after the hearing of September 30, 2003, he was approached by someone who asked him to comment on the Order issued in open court, and that his comment does not fall within the concept of indirect contempt of court. He also admitted that he was interviewed by his friend, Tony Consing, at the latter's instance. He justified his response during the interview as a simple exercise of his constitutional right of freedom of speech and that it was not meant to offend or malign, and was without malice.

On February 8, 2004, the trial court issued an Order, the dispositive portion of which reads:

WHEREFORE, finding preponderant evidence that Prosecutor Bagabuyo has grossly violated the Canons of the legal profession and [is] guilty of grave professional misconduct, rendering him unfit to continue to be entrusted with the duties and responsibilities belonging to the office of an attorney, he is hereby **SUSPENDED** from the practice of law.

Likewise, he is also found guilty of indirect contempt of court, for which he is hereby ordered to suffer the penalty of **IMPRISONMENT** for ninety (90) days to be served at the Surigao City Jail and to pay the maximum fine of **THIRTY THOUSAND PESOS (P30,000.00)**. Future acts of contempt will be dealt with more severely.

Let copies of the relevant records be immediately forwarded to the Supreme Court for automatic review and for further determination of grounds for [the] disbarment of Prosecutor Rogelio Z. Bagabuyo.[10]

The trial court found respondent's denials to be lame as the tape of his interview on October 2, 2003, duly transcribed, showed disrespect of the court and its officers, thus:

TONY CONSING :

Fiscal, nanglabay ang mga oras, nanglabay ang gamay'ng panahon ang samad sa imong kasingkasing nagpabilin pa ba ni. O ingnon nato duna na bay pagbag-o sa imong huna-huna karon?

(Fiscal, after the lapse of time, are you still hurt? Or have you not changed your mind yet?)

BAGABUYO :

Ang akong huna-huna kon aduna man ugaling pagbag-o ang pagsiguro, ang mga Huwes nga dili mahibalo sa balaod tangtanganon pagka abogado, mao kana.

(If my mind has changed at all, it is that I ensure that all judges who are ignorant of the law should be disbarred. That's it.)

x x x

BAGABUYO :

Mao kana ang tinuod, Ton, ug kining akong guibatonan karon nga hunahuna mahitungod nianang mga Huwes nga dili kahibalo sa balaod, magkadugay magkalami. Kada adlao nagatoon ako. Nagabasa ako sa mga bag-ong jurisprudence ug sa atong balaod aron sa pagsiguro gayod nga inigsang-at unya nako sa kaso nga disbarment niining di mahibalo nga Huwes, sigurado gayod ako nga katamtaman siya sa lisensiya Ang kini nga Huwes nga dili mahibalo sa balaod, pagatangtanganon na, dili lamang sa pagka-Huwes kon dili sa pagka-abogado. Tan-awa ra gyod kining iyang gibuhat nga Order, Ton, ang iyang pagkabakakon

(That's true, Ton, and this conviction I have now about judges who are ignorant of the law is made firmer by time. I study everyday. I read new jurisprudence and the law to insure that when I file the disbarment case against this Judge who does not know his law, I am certain that he loses his license. . . . This judge who is ignorant of the law should not only be removed as a judge but should also be disbarred. Just take a look at his Order, Ton, and see what a liar he is)

x x x

BAGABUYO :

Yes, nag-ingon ang iyang Order. . . . Ngano nga nakaingon ako nga bakakon kini, nag-ingon nga kini konong order given in open court, ang kalooy sa dios, ang iyang order sa Korte wala siya mag-ingon ug kantidad nga P100,000.00 nga bail bond. . . .

(Yes, his Order said that Why did I say that he is a liar? It states that this Order was “given in open court,” and in God’s mercy, he did not state the amount of P100,000.00 as bail bond. . . .)

BAGABUYO :

Kay dili man lagi mahibalo sa balaod, ako siyang gui-ingnan, Your Honor, I have the right to appeal. Mibalik dayon, ug miingon siya, BJMP arrest Bagabuyo.

(Because he does not know the law, I said, "Your Honor, I have the right to appeal." Then he came back and said, “BJMP, arrest Bagabuyo.”)

x x x

BAGABUYO :

. . . P100,000.00 ang iyang guipapiyansa. Naunsa na? Dinhi makita nimo ang iyang pagka gross ignorance of the law. . . .

(He imposed a bail of P100,000.00. How come? This is where you will see his gross ignorance of the law. . . .)

x x x

TONY CONSING :

So karon, unsay plano nimo karon?

(So what is your plan now?)

BAGABUYO :

Sumala sa akong gui-ingon moundang lang ako kon matangtang na siya sa pagka abogado. . . .

(As I have said, I will only stop if he is already disbarred. . . .)

x x x

BAGABUYO :

Nasuko siya niini kay hambugero kuno, pero angayan niyang hibaw-an nga ang trabaho sa Huwes dili ang pagtan-aw kon ang tawo hambugero Ug ang akong gisulti mao lamang ang balaod nga siya in fact at that time I said he is not conversant of the law, with regards to the case of murder. . . .

(He got angry because I was allegedly bragging but he should know that it is not for a judge to determine if a person is a braggart. . . . And what I said was based on the law. In fact, at that time, I said he is not conversant of the law, with regards to the case of murder)

x x x

BAGABUYO :

Ah, mi sit down sab ako, contempt ra ba kadto Mao kana, pero unsa may iyang katuyoan – ang iyang katuyoan nga ipa-adto ako didto kay didto, iya akong pakauwawan kay iya kong sikopon, iya kong ipa-priso, pero kay di man lagi mahibalo sa balaod, ang iyang gui orderan BJMP, intawon por dios por Santo, Mr. Tan, pagbasa intawon ug balaod, naunsa ka ba Mr. Tan? Unsa may imong hunahuna nga kon ikaw Huwes, ikaw na ang diktador, no way, no sir, ours is a democratic country where all and everyone is entitled to due process of law – you did not accord me due process of law

(I sat down. . . . That's it. But what was his purpose? He made me come in order to humiliate me because he wanted me arrested, he wanted me imprisoned, but because he is ignorant of the law, he ordered the BMJP. For God's sake, Mr. Tan, what's wrong with you, Mr. Tan? Please read the law. What is your thinking? That when you are a judge, you are also a dictator? No way, no sir, ours is a democratic country where all and everyone is entitled to due process of law - you did not accord me due process of law. . . .)

TONY CONSING :

So mopasaka kang disbarment, malaumon kita nga maaksiyonan kini, with all this problem sa Korte Suprema.

(So you are filing a disbarment case? We hope that this be given action with all the problems in the Supreme Court.)

BAGABUYO :

Dili ako mabalaka niana kay usa ka truck ang akong jurisprudence, nga ang mga Huwes nga di mahibalo sa balaod pagatangtongan gayod sa ilang pagka Huwes. . . . Apan unsa man intawon ang balaod ang iyang gibasa niini nadunggan ko nga kini kuno siya madjongero, mao bitaw na, madjong ang iyang gitudunan?

(I am not worried because I have a truckload of jurisprudence that judges who are ignorant of the law must be removed from the Bench. But what law has he been reading? I heard that he is a mahjong aficionado (mahjongero) and that is why he is studying mahjong.[11]

The trial court concluded that respondent, as a member of the bar and an officer of the court, is duty bound to uphold the dignity and authority of the court, and should not promote distrust in the administration of justice.

The trial court stated that it is empowered to suspend respondent from the practice of law under Sec. 28, Rule 138 of the Rules of Court[12] for any of the causes mentioned in Sec. 27[13] of the same Rule. Respondent was given the opportunity to be heard, but he opted to be silent. Thus, it held that the requirement of due process has been duly satisfied.

In accordance with the provisions of Sec. 29,[14] Rule 138 and Sec. 9,[15] Rule 139 of the Rules of Court, the RTC of Surigao City, Branch 29, transmitted to the Office of the Bar Confidant the Statement of Facts of respondent's suspension from the practice of law, dated July 14, 2005, together with the order of suspension and other relevant documents.

In its Report dated January 4, 2006, the Office of the Bar Confidant found that the article in the August 18, 2003 issue of the Mindanao Gold Star Daily, which maligned the integrity and independence of the court and its officers, and respondent's criticism of the trial court's Order dated November 12, 2002, which was aired in radio station DXKS, both in connection with Crim. Case No. 5144, constitute grave violation of oath of office by respondent. It stated that the requirement of due process was complied with when respondent was given an opportunity to be heard, but respondent chose to remain silent.

The Office of the Bar Confidant recommended the implementation of the trial court's order of suspension dated February 8, 2004, and that respondent be suspended from the practice of law for one year, with a stern warning that the repetition of a similar offense will be dealt with more severely.

The Court approves the recommendation of the Office of the Bar Confidant. It has been reiterated in *Gonzaga v. Villanueva, Jr.*[16] that:

A lawyer may be disbarred or suspended for any violation of his oath, a patent disregard of his duties, or an

odious deportment unbecoming an attorney. Among the grounds enumerated in Section 27, Rule 138 of the Rules of Court are deceit; malpractice; gross misconduct in office; grossly immoral conduct; conviction of a crime involving moral turpitude; any violation of the oath which he is required to take before admission to the practice of law; willful disobedience of any lawful order of a superior court; corrupt or willful appearance as an attorney for a party to a case without authority to do so. The grounds are not preclusive in nature even as they are broad enough as to cover practically any kind of impropriety that a lawyer does or commits in his professional career or in his private life. A lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his entrance to the Bar, but are likewise essential demands for his continued membership therein.

Lawyers are licensed officers of the courts who are empowered to appear, prosecute and defend; and upon whom peculiar duties, responsibilities and liabilities are devolved by law as a consequence.[17] Membership in the bar imposes upon them certain obligations.[18] Canon 11 of the Code of Professional Responsibility mandates a lawyer to “observe and maintain the respect due to the courts and to judicial officers and [he] should insist on similar conduct by others.” Rule 11.05 of Canon 11 states that a lawyer “shall submit grievances against a judge to the proper authorities only.”

Respondent violated Rule 11.05 of Canon 11 when he admittedly caused the holding of a press conference where he made statements against the Order dated November 12, 2002 allowing the accused in Crim. Case No. 5144 to be released on bail.

Respondent also violated Canon 11 when he indirectly stated that Judge Tan was displaying judicial arrogance in the article entitled, Senior prosecutor lambasts Surigao judge for allowing murder suspect to bail out, which appeared in the August 18, 2003 issue of the Mindanao Gold Star Daily. Respondent’s statements in the article, which were made while Crim. Case No. 5144 was still pending in court, also violated Rule 13.02 of Canon 13, which states that “a lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.”

In regard to the radio interview given to Tony Consing, respondent violated Rule 11.05 of Canon 11 of the Code of Professional Responsibility for not resorting to the proper authorities only for redress of his grievances against Judge Tan. Respondent also violated Canon 11 for his disrespect of the court and its officer when he stated that Judge Tan was ignorant of the law, that as a mahjong aficionado, he was studying mahjong instead of studying the law, and that he was a liar.

Respondent also violated the Lawyer’s Oath, as he has sworn to “conduct [himself] as a lawyer according to the best of [his] knowledge and discretion with all good fidelity as well to the courts as to [his] clients.”

As a senior state prosecutor and officer of the court, respondent should have set the example of observing and maintaining the respect due to the courts and to judicial officers. *Montecillo v. Gica*[19] held:

It is the duty of the lawyer to maintain towards the courts a respectful attitude. As an officer of the court, it is his duty to uphold the dignity and authority of the court to which he owes fidelity, according to the oath he has taken. Respect for the courts guarantees the stability of our democratic institutions which, without such respect, would be resting on a very shaky foundation.

The Court is not against lawyers raising grievances against erring judges but the rules clearly provide for the proper venue and procedure for doing so, precisely because respect for the institution must always be maintained.

WHEREFORE, in view of the foregoing, Atty. Rogelio Z. Bagabuyo is found guilty of violating Rule 11.05, Canon 11 and Rule 13.02, Canon 13 of the Code of Professional Responsibility, and of violating the Lawyer’s Oath, for which he is **SUSPENDED** from the practice of law for one (1) year effective upon finality of this

Decision, with a STERN WARNING that the repetition of a similar offense shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to respondent's personal record as an attorney, the Integrated Bar of the Philippines, the Department of Justice, and all courts in the country for their information and guidance.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.

[1] Sec. 4. Bail, a matter of right; exception.--All persons in custody shall be admitted to bail as a matter of right x x x (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment.

[2] Rollo, p. 45.

[3] Id. at 101.

[4] Id. at 115.

[5] Id. at 114-115.

[6] Sec. 3. Indirect contempt to be punished after charge and hearing. – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.

[7] Rollo, p. 126.

[8] CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS

x x x

Rule 11.05. – A lawyer shall submit grievances against a Judge to the proper authorities only.

[9] CANON 13 – A LAWYER SHALL RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE OR GIVES THE APPEARANCE OF INFLUENCING THE COURT

x x x

Rule 13.02. – A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

[10] Rollo, pp. 153-154.

[11] RTC Order, February 8, 2004, Rollo, pp. 144-147. Emphasis supplied.

[12] Sec. 28. Suspension of attorney by the Court of Appeals or a Regional Trial Court. -- The Court of Appeals or a Regional Trial Court may suspend an attorney from practice for any of the causes named in the last preceding section, and after such suspension such attorney shall not practice his profession until further action of the Supreme Court in the premises.

[13] Sec. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefor.--A member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court; corrupt or willful appearance as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[14] Sec. 29. Upon suspension by Court of Appeals or Regional Trial Court, further proceedings in Supreme Court. – Upon such suspension, the Court of Appeals or the Regional Trial Court shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon the receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the attorney from his office as such, as the facts warrant.

[15] Sec. 9. Procedure in Court of Appeals or Regional Trial Court.—As far as may be applicable, the procedure above outlined shall likewise govern the filing and investigation of complaints against attorneys in the Court of Appeals or in Regional Trial Court. In case of suspension of the respondent, the judge of [the] Regional Trial Court or Justice of the Court of Appeals shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which [the] same is based.

[16] Adm. Case No. 1954, July 23, 2004, 435 SCRA 1, 9-10.

[17] Reyes v. Chiong, Jr., A.C. No. 5148, July 1, 2003, 405 SCRA 212, 217.

[18] Ibid.

[19] No. L-36800, October 21, 1974, 60 SCRA 234, 245.

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