

ARMANDO A. ALA, COMPLAINANT, VS. ATTY. JUAN G. ATENCIA, RESPONDENT.

A.C. No. 728. August 16, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

The Solicitor General in a complaint dated November 14, 1973 charged Atty. Juan G. Atencia (who was admitted to the bar in 1953) with malpractice, gross misconduct and betrayal of trust.

The charges were based on the 1968 recommendation of the provincial fiscal of Catanduanes who investigated the complaint for extortion or blackmail lodged against Atencia in 1966 by Armando A. Ala.

The record discloses that Ala, a married man with six children (he was fifty-five years old in 1967) was employed since 1964 as provincial auditor at Virac, Catanduanes. Working in the auditor's office since 1957 as a clerk or secretary receiving P180 a month was an unmarried woman (she was thirty-six years old in 1965) named Miguela R. Luyon, a native of Virac.

On March 12, 1965 Miguela gave birth at the Veterans Memorial Hospital in Quezon City to a baby girl who was named Maria Fe. It was made to appear in the birth certificate that the father of Maria Fe was a man named Jose R. Avila, a supposed forty-five-year old clerk and native of Virac, whom Miss Luyon allegedly married on January 24, 1963 (Exh. A).

From the affidavits of Lilia V. Aquino, Ala's alleged goddaughter, and Natividad Balmadrid, Miguela's alleged companion in the district engineer's office where Miguela was later detailed, it appears that Mrs. Ala came to know about Miguela's child. Mrs. Ala allegedly spread rumors that Miguela's child was "a communal child", thus implying that Miguela was a promiscuous woman who had affairs with two or more men. That gossip provoked her to seek a judicial declaration that Ala had fathered her child (28 tsn July 17, 1974). For that purpose she contracted the services of Atty. Juan G. Atencia on June 23, 1966 (Exh. B-3).

On June 24, 1966, Atty. Atencia filed in behalf of Maria Fe a complaint for recognition and support in the Court of First Instance of Catanduanes (Civil Case No. 562). It was alleged therein that the real father of Maria Fe was Ala and that, as agreed upon between Miguela and Ala, Maria Fe was given the surname Avila because that was a common patronymic in Virac and it contains the three letters of the surname Ala.

Annexed to the complaint was an affidavit dated June 16, 1966 and supposedly subscribed and sworn to by Ala before the deputy clerk of court on June 20, 1966. In that affidavit Ala acknowledged that he is Maria Fe's father.

On June 27 Ala was served with summons. He noted from Annex A of the complaint that he had supposedly sworn to an affidavit of acknowledgment before Lauro L. Fajardo, the deputy clerk of court. As Ala did not remember having signed that affidavit, he confronted Fajardo with that document. Ala chided Fajardo for not informing him first about the affidavit since both of them had offices in the same building.

On that same day, June 27, Atencia wrote the following letter to Miguela:

"Dear Miss Luyon:

"This is in connection with Civil Case No. 562, Court of First Instance of Catanduanes, entitled Maria Fe Luyon Avila, assisted by her mother Miguela R. Luyon, plaintiff vs. Armando A. Ala, defendant.

"You will recall that last Saturday morning at about 11:00 o'clock I chanced upon you and the defendant in a room of the house of Mr. & Mrs. Manuel Aquino while you were discussing the above-entitled case with the defendant. I have positive information that you are amenable to have the case dismissed or withdrawn because of the representations of the defendant. I wish to inform you that I have no intention of dismissing or withdrawing the case if that will prejudice or endanger the future of the plaintiff Maria Fe Luyon Avila and that if you insist on destroying the future of the child by entering into a compromise prejudicial to her I shall ask the Court that you should not be made the guardian ad litem of the child and in your place, I shall ask the Court to appoint somebody else who will protect the interest of the child. Furthermore, if by your acts of compromising the case with the defendant, damage would be caused to the child, I shall also file a corresponding case against you.

"Please consider this letter as fair and sufficient warning to you in order to guide you in your future acts in relation to the above-entitled case.

Truly yours,

Sgd. JUAN G. ATENCIA
Counsel for the Plaintiff
Civil Case No. 562" (Exh. B)

On the following day, June 28, Atencia filed a motion in Civil Case No. 562 praying that the petition in the complaint that Miguela should be appointed guardian ad litem of Maria Fe be considered withdrawn and that he be given thirty days to nominate another guardian ad litem. The motion contained the following allegations (Exh. B-1):

"II. That the undersigned counsel has strong reasons to believe that Miss Miguela R. Luyon, mother of the plaintiff, for reasons of her own and for her own personal benefit but to the prejudice of the plaintiff (Maria Fe) is willing to accede to the wishes of the defendant that this case be withdrawn as may be shown by the circumstance cited in a letter, the original of which was received by Miss Miguela R. Luyon on June 27, 1966, and a copy of which is Annex "A" hereof, which is hereby made an integral part of this motion; and

"III. That in view of the fact that in an interview by the undersigned attorney with Miss Miguela R. Luyon on June 27, 1966, he was convinced that Miss Luyon is madly in love with the defendant and therefore, under the

influence of that madness of love would take steps that would be detrimental to the interests of the plaintiff."

At around five o'clock in the afternoon of July 1, Ala, accompanied by his son, Armando, Jr., went to Atencia's house located at 89 Unang Hakbang Street, Galas, Quezon City. They talked in a private room fronting the sala near the dining room. According to Ala he asked Atencia how much money the latter wanted for the return of the affidavit and the dismissal of the case. Atencia allegedly said that he needed money for his children's tuition fees and that as Ala did not bring any money, Atencia allegedly told him to come back on the following day. Atencia denied having agreed to return the affidavit to Ala.

Ala said that in the afternoon of July 2, he, accompanied by his son Armando and his brother-in-law, Carlos Tongo, repaired to Atencia's residence in Quezon City. Ala briefed his son about the case. Tongo gave him a legal-size envelope. In the presence of Armando and Tongo, Ala placed in the envelope three hundred pesos consisting of six fifty-peso bills.

Ala and Atencia talked in the private room of Atencia's house which Atencia locked when they were inside. Atencia allegedly asked Ala if he had brought the money which on the previous afternoon Ala had promised to deliver to Atencia. Ala said that he would deliver the money if Atencia would surrender the evidence of the case.

Atencia allegedly replied that the affidavit or evidence was in his office in Virac and that he (Atencia) would follow Ala to Virac after two days and burn the papers in Ala's presence so that other persons would not get hold of them. Atencia allegedly promised to file a motion for the dismissal of the paternity suit.

On the faith of that promise, Ala allegedly took from the left pocket of his pants the envelope containing the sum of three hundred pesos and handed it to Atencia. After Atencia counted the money and found that it amounted to P300 only, he remarked that it was too small and that his children's tuition fees totalled around P950. Atencia did not give any receipt for the P300.

Atencia denied having asked for and received P300 from Ala. Ala declared that he promised to send Atencia the balance of P700 after his return to Virac.

On July 4 Ala went home to Virac. On the next day, July 5, he sent by air cargo, as shown in PAL air waybill No. 1285926 "one (1) sealed carton containing cash -seven hundred pesos only (P700.00) in Philippine currency, counted, packed and sealed in the presence of the shipper", addressed to Atencia at his Quezon City residence (Exh. C). At the same time Ala wired Atencia as follows: "Amount sent via PAL today. Regards. Ala" (Exh. D). The amount was delivered on July 6 by Pedro Tabirara, the PAL air cargo messenger, to its Gemina Atencia, respondent's wife (Exh. C-1-a). Respondent Atencia admitted that fact in his answer.

On July 10 Atencia was in Virac. He allegedly sent word through Mrs. Aquino that he wanted to meet Ala at the house of Sofio Arcilla, her brother-in-law. Ala went to Arcilla's house and met Atencia in that place. Atencia admitted to Ala that he received the P700. Ala allegedly then asked Atencia whether he had the papers of the case and if he had filed the motion for dismissal.

Atencia allegedly replied that he was disinclined to move for the dismissal of the case because he wanted some more money. He said that with the help of Ala's office the amount of P70,000 earmarked for the Virac seawall could be released by means of a simulated contract between the government and a private contractor. Ala demurred. He said that he did not want to be involved in a fraudulent transaction. Atencia denied having asked Ala to cause the release of any government funds through a simulated contract.

On July 24 while Ala was in the town of Bagamanoc, Catanduanes to inspect the proposed site of a municipal building, he had a conversation with the mayor, Dioscoro Pascua, Atencia's brother-in-law. Ala told Pascua that Atencia refused to give him the papers of his case although he had already paid Atencia P1,040. Pascua promised

to help Ala.

On July 25 Ala fetched Mayor Pascua who on arriving at Virac conferred with Atencia. Pascua informed Ala that Atencia would like to talk with Ala at four o'clock in the afternoon at Balongbong Falls, Bato, Catanduanes. Ala, accompanied by Rafael Molina and Leonor Gapaz (Ala's son-in-law), met Atencia at the place. Instead of giving him the papers of the case, Atencia allegedly asked Ala to help him (Atencia) sell his residential lot in Virac for P15,000. Atencia said that he needed money to forestall the foreclosure of the mortgage on his house. His house was mortgaged for P25,000 (33 tsn September 20, 1974).

To help Atencia, Ala requested Molina to contact Jose Lim, the manager of Acme Commercial in Virac. On July 26 Atencia dispatched his driver, Pedro Romero, to Ala with the draft of the deed of sale to be signed by Lim. Lim told Atencia while in Ala's office that the price of P15,000 was too high. Atencia allegedly remarked that Lim could recover his loss by inflating the price of the materials which he would sell to the government.

On July 28 Atencia filed a manifestation in Civil Case No. 562 stating that he was withdrawing his opposition to the appointment of Miguela as guardian ad litem of Maria Fe. Then, he left for Manila. He entrusted to Mrs. Aquino the draft of the deed of sale. On July 29, when Atencia was already in Manila, he wired Molina to inform Lim that Lim had up to August 1 to pay for the land. Molina delivered to Ala the collect telegram of Atencia (Exh. F). Lim decided not to buy Atencia's lot.

On August 2 Miguela filed a motion to dismiss Civil Case No. 562, the action for recognition and support filed for her by Atencia. She alleged in her motion:

"2. That after a thorough examination of my conscience in relation to whatever consequences it may had (have) in my private and public life, and in particular considering the interest of my issue who is the minor plaintiff, I deem it wise to withdraw the above-entitled case against the defendant (Ala). An affidavit is hereto attached and marked as Annex A.

"3. That for purposes of this motion, I hereto attach as Annex B a copy of my letter to my attorney (Atencia) terminating his services and severing our attorney-client relationship."

Miguela affirmed in her affidavit that she was no longer interested in prosecuting the case against Ala and that she had terminated Atencia's services.

Miguela's letter to Atencia reads as follows (Exh. I) :

"Virac, Catanduanes
August 2, 1966

"Atty. Juan G. Atencia
Virac, Catanduanes

"Dear Atty. Atencia:

I wish to inform you that I am terminating the lawyer-client relationship between us. In this connection, I request that all pertinent papers regarding Civil Case No. 562 for support and recognition filed against Mr. Armando A. Ala be returned to the undersigned.

"I am requesting you therefore to state the amount of attorney's fee I will have to pay.

"Very truly yours,

Sgd. Miguela R. Luyon"

On August 8, 1966 the Court of First Instance of Catanduanes issued an order dismissing the complaint in Civil Case No. 562 (Exh. H-2). On that same date Atencia (who was in Virac) answered Miguela's letter by stating that she had not given him any pertinent papers except two copies of Ala's affidavit which were attached to the complaint filed in court. Atencia said that he was "not now disposed to accept any amount of attorney's fees from Miguela" (Exh. 1-2).

In the evening of August 4, Atencia's driver allegedly contacted Ala at his boarding house at 62 Calamba Street, La Loma, Quezon City. Romero told Ala that Atencia wanted to see Ala at Atencia's residence on that same night. Ala said that due to a prior engagement at the Shellborne Hotel he could not confer with Atencia.

In the following morning, Romero, Atencia's driver, again went to Ala's boarding house in order to fetch him so that he could confer with Atencia. As Ala had to attend a hearing at the General Auditing Office, he sent his wife and son to go with Romero in Atencia's car and to find out what Atencia wanted. However, they could not locate Atencia. On August 6 Atencia sent a note to Ala stating that Ala could see Atencia in his house between eight and nine o'clock in the morning of Sunday, August 7 (Exh. G). Ala tried to see Atencia on Sunday afternoon. He was informed that Atencia had left for the province at noontime.

While Ala was still in Manila, his clerk informed him that a person named Pedro T. Pantino (a former colleague of Atencia in the provincial board) had filed in the Civil Service Commission a complaint charging him and Miguela with immorality. Pantino said that he later withdrew the charge.

Ala took the offensive against Atencia by filing this disbarment case. In a "petition" dated August 26, 1966 he charged Atencia with malpractice and conduct unbecoming a member of the bar and prayed that Atencia be "disbarred perpetually".

Miguela R. Luyon, who was Ala's co-respondent in the administrative case, also filed a verified letter complaint dated August 25, 1966 received in this Court on September 7, 1966 wherein she recounted Atencia's unethical behavior and chicanery and prayed that "the full penalty of the law" be imposed on him.

Miguela's letter reads (Exh. J):

"The Honorable Supreme Court
Manila

"Your Honors:

"I am an unmarried woman of legal age, residing at Virac, Catanduanes, and hereby respectfully brings to your honor's attention the unethical act of a member of bar, Atty. Juan G. Atencia, who has his law office in Virac, Catanduanes.

"Sometime ago, I consulted a certain Atty. Rafael Santelices regarding my child who was fathered by someone out of wedlock. Atty. Santelices prepared an affidavit which was to be signed by Armando A. Ala wherein he admits paternity of the child. Later, Atty. Juan G. Atencia sent for me. He asked me about my legal problem. I told him about my child. I showed him the unsigned statement of Armando A. Ala, prepared by Atty. Santelices. He instructed me to find a way so that Ala could sign the statement. Later I was able to get the signature of Ala and Atty. Atencia instructed me to have Lauro Fajardo, a deputy Clerk of the Court of First Instance of Catanduanes to ratify it, which said Mr. Fajardo did so. Then I delivered the document to Atty. Atencia. On June 24, 1966, after he assured me my case was a winning case, he filed a complaint for recognition and support against Armando A. Ala, Provincial Auditor of Catanduanes. The case was docketed as Civil Case No. 562, supported by the affidavit I gave him.

"After the case was filed, I learned that my attorney, Juan G. Atencia had secret contacts with the defendant in Civil Case No. 562, I was informed that my attorney received money from the defendant. I did not believe at first since Atencia seemed to be interested in my case. Later, however, my attorney became quite indifferent to me. So I believed that he was really given money by Ala, so that my case would be jeopardized.

"On June 28, 1966, my counsel filed a motion to disqualify me as guardian of my child, Maria Fe Luyon Avila. I was surprised why my lawyer to whom I confided everything regarding my case was trying to disqualify me to be a guardian of my very own child.

"I had lost my confidence in Atty. Atencia, in fact I lost my confidence to all lawyers. So I filed a motion to dismiss Civil Case No. 562, which motion was granted on August 8, 1966.

"And then to add insult to my already injured interest, Juan G. Atencia induced Pedro Pantino to prepare an administrative complaint against me and Armando A. Ala. Atencia used as the basis of the administrative case the evidence which he obtained during the existence of our attorney-client relationship, which evidence he refused to return to me after I advised him that I was terminating our attorney and client relationship.

"Your Honors, must I suffer because I am a poor woman? Must I be the victim of the chicanery of some lawyers? I, a citizen of this country, who according to President Marcos is going to be great again needs justice. The highest magistracy of the Republic of the Philippines was supposed to supervise the conduct of the members of the bar of this country.

"I am appealing to this magnanimous tribunal to give me justice. With due respect and on bended knees, I beg an investigation of my case, and if warranted, Atty. Juan G. Atencia, who betrayed the trust and confidence I have given him due to our attorney-client relationship should be given the full penalty of the law.

"IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of August, 1966, at Virac, Catanduanes.

Sgd. Miguela R. Luyon
Complainant"

(Miguela's complaint was docketed as Administrative Case No. 727. She did not prosecute it because Ala stopped giving support to her child. 84 tsn July 18, 1974, Exh. 21).

Respondent Atencia in his verified answer to Ala's complaint denied the extortion charge. He said that the sum of P700 was sent by Miguela to him through Ala to cover Atencia's transportation and other expenses. He denied that he prepared the immorality charge filed by Pantino.

The case was referred in March, 1967 to the provincial fiscal of Catanduanes. Atencia failed to present his evidence before the fiscal.

Fiscal Mario L. Bolaños in his 46-page report dated September 18, 1968 found that "there is no doubt that" Atencia "had asked and actually received from" Ala the total sum of P1,040 (36); that Atencia defrauded Ala because after receiving that amount he did not fulfill his part of the bargain, which was the dismissal of the paternity suit (40), and that Atencia's modus operandi of extracting money from Ala without Miguela's consent, while the suit was still pending, constituted "malpractice pure and simple" because Atencia thereby sold his client down the river and because a lawyer cannot compromise a client's case "for a valuable consideration which goes into the pocket of the attorney" (41-42).

In 1973 the Solicitor General's Office, acting on Fiscal Bolaños' 1968 report, filed the complaint for disbarment. The Solicitor General observed that Atencia's "lack of interest in presenting his defense to the charges and evidence against him is equivalent to the admission on his part of the weakness and lack of merit of his defense as set forth in his answer" to Ala's complaint.

Respondent Atencia in his 1974 answer to the Solicitor General's complaint reiterated in substance the allegations in his prior answer. At his request, he was allowed to present evidence before the Court's legal officer in 1974 and 1975.

Atty. Atencia (who was fifty-three years old in 1974) testified that as a Nacionalista member of the provincial board of Catanduanes from 1956, he came to know Miguela R. Luyon. She was an employee of the provincial auditor's office that processed their vouchers. He knew that Miguela is the sister-in-law of Mayor Salvador Surtida of Virac.

It was incumbent upon Atencia to overcome the manifestly incriminatory character of his receipt from Ala of P700, a fact which he admitted because he could not deny it.

Atencia's version is that the amount was sent to him by Ala, at Miguela's behest, to cover his transportation and expenses for his stay in Virac (Exh. 11). Ala himself had to send it because Miguela allegedly did not know how to remit it by air cargo.

Atencia at first wanted to return the P700.00 to Miguela, but he did not insist on returning the money to Miguela because of her assurance that it was her money which she had caused to be sent to him (27-28, 31 tsn, September 20, 1974). Atencia said that he attempted to return the P700 to Ala but the latter allegedly refused to accept it.

Atencia also said that on July 11, 1966, when he met Miguela and she asked him how much attorney's fees should

be paid to him since the case would be settled amicably, he assured her not to mind paying him anymore because he had already received P700 and that would be sufficient (Ibid., 38 tsn).

Atencia's version is that in the afternoon of June 28, 1966, while he was at the Virac airport about to embark in a Manila-bound plane, Romero, the driver, handed to him a note from Lilia Aquino. The note (Exh. 11) reads as follows:

"June 28/66

"Dear Cang Juaning:

"Miss Luyon again come (came) to me and told me that she has already made an arrangement with Mr. Ala, that is good for their child. She requested that if possible you should postpone your trip to Manila so that you can attend to this problem and finish the case.

"If you can not postpone your trip, she requested that you should please come back as soon as possible. She will send you money for your transportation and expenses for your stay in Virac.

"Sincerely,

Lilia"

Atencia said that he instructed Romero to tell Lilia that, as he could not postpone his trip, Miguela should send him an amount of not less than P500 for his transportation and expenses during his stay in Virac. (18-20 tsn September 20, 1974). In Lilia Aquino's affidavit the sum of P500 was not specified. She just said that Atencia wanted Miguela to send him money for his expenses (Annex 5 of 1974 answer).

Atencia was already in Quezon City on June 28, 1966. According to his version, Miguela should remit to him in a few days the sum of not less than P500 to cover his transportation expenses and the expenses of his sojourn in Virac for the purpose of settling amicably the paternity suit.

The sum of P700 was received by Atencia's wife on July 6. Atencia said that he was then with his parents at Daet, Camarines Norte. He went to that place on July 2, 1966. Atencia said that while in Daet he received a wire from his wife that she had received P700 from Ala.

Atencia was allegedly surprised why it was Ala who had sent the money. He went home to Quezon City. On July 10 he went to Virac. He tried to return the P700 to Ala but he refused to receive it. He tried to return it to Miguela but she also refused to accept it. He and Miguela finally agreed that the amount would be treated as payment of his attorney's fees and as reimbursement for his expenses. Miguela paid to him an additional sum of twenty-five pesos as reimbursement of his expenses in checking the record of birth of Maria Fe in Quezon City and her baptism (38 tsn September 20, 1974).

It is a fact that Atencia received the P700.00 via PAL air cargo. The amount was sent to him by Ala. What is not

clear is why Ala sent the money to Atencia. Ala claims that the amount was extorted from him by Atencia. The note of Lilia Aquino, Exh. 11, tends to support the version of Atencia that the amount of P700.00 was sent to him by Ala at the instance of Miguela to cover the transportation and other expenses of Atencia from Quezon City to Virac, Catanduanes to confer with Miguela about the paternity case.

It is not therefore clear that Atencia extorted any amount from Ala. This being a disbarment case, the doubt should be resolved in favor of the respondent.

However, the actuations of Atencia leave much to be desired. He manifested undue interest in prosecuting the paternity suit against Ala. Atencia even went to the extent of asking the Court of First Instance of Catanduanes to appoint somebody also as guardian ad litem of Maria Fe Luyon Avila when he learned that Miguela was about to ask for the dismissal of the case against Ala.

Moreover, Atencia did not return the original of the affidavit of Ala acknowledging paternity of Maria Fe Luyon Avila. It appears that what was attached to the complaint in the paternity case was only a carbon copy. The original of said affidavit was attached to the administrative complaint filed by Pedro Patino against Ala and Miguela in the Commission of Civil Service. There is reason to believe that Atencia instigated the filing of the said administrative charge.

For these acts of Atencia he should be disciplined. Under the circumstances of the case he should be suspended from the practice of law for six (6) months.

WHEREFORE, the respondent, Juan G. Atencia, is hereby suspended from the practice of law for a period of six (6) months from notice.

SO ORDERED.

Fernando, Teehankee, Makasiar, Muñoz Palma, Concepcion, Jr., Santos, and Guerrero, JJ., concur.

Castro, C.J., and Antonio, J., in the result.

Barredo and Aquino, JJ., no part.

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