

ASSISTANT SPECIAL PROSECUTOR III ROHERMIA J. JAMSANI-RODRIGUEZ, COMPLAINANT, VS. JUSTICES GREGORY S. ONG, JOSE R. HERNANDEZ, AND RODOLFO A. PONFERRADA, SANDIGANBAYAN, RESPONDENTS.

A.M. No. 08-19-SB-J. April 12, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

We resolve: (a) the Joint Motion for Reconsideration dated September 14, 2010 filed by respondents Sandiganbayan Associate Justice Gregory S. Ong (Justice Ong) and Associate Justice Jose R. Hernandez (Justice Hernandez); and (b) the Motion for Reconsideration (of the Honorable Court's Decision Dated 1 September) dated September 15, 2010 of the complainant.

Both motions seek the reconsideration of the Decision rendered on August 24, 2010, albeit on different grounds.

Through the Decision, we found and held Justice Ong and Justice Hernandez liable for simple misconduct, and disposed against them and Associate Justice Rodolfo A. Ponferrada (Justice Ponferrada), as follows:

1. ASSOCIATE JUSTICE GREGORY S. ONG is ordered to pay a fine of P Normal 0 false false false EN-US X-NONE X-NONE MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri", "sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-fareast-font-family:"Times New Roman"; mso-fareast-theme-font:minor-fareast; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} Normal 0 false false false EN-US X-NONE X-NONE MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri", "sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-fareast-font-family:"Times New Roman"; mso-fareast-theme-font:minor-fareast; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} 15,000.00, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely;

2. ASSOCIATE JUSTICE JOSE R. HERNANDEZ is admonished with a warning that a repetition of the same or similar offenses shall be dealt with more severely; and

3. ASSOCIATE JUSTICE RODOLFO A. PONFERRADA is warned to be more cautious about the proper procedure to be taken in proceedings before his court.[1]

A brief account of the factual antecedents is first given.

The complainant, then an Assistant Special Prosecutor III in the Office of the Special Prosecutor, filed an affidavit-complaint dated October 23, 2008 charging Justice Ong, Justice Hernandez and Justice Ponferrada, as the Members of the Fourth Division of the Sandiganbayan with: (a) grave misconduct, conduct unbecoming a Justice, and conduct grossly prejudicial to the interest of the service (grounded on their failing to hear cases as a collegial body during the scheduled sessions of the Fourth Division held in Davao City on April 24-28, 2006, with Justice Ong hearing cases by himself and Justice Hernandez and Justice Ponferrada hearing other cases together; and on their having unreasonably flexed their judicial muscle when she objected to the procedure); (b) falsification of public documents (grounded on their issuance of orders relative to the hearings in Davao City, signed by all three of them, that made it appear as if all of them had been present during the particular hearing acting as a collegial body, when in truth they were not); (c) improprieties in the hearing of cases that amounted to gross abuse of judicial authority and grave misconduct (grounded on Justice Ong and Justice Hernandez's making the following intemperate and discriminatory utterances during the hearings of their Division in Cebu City sometime in September 2006), to wit:

(a) `We are playing Gods here, we will do what we want to do, your contempt is already out, we fined you eighteen thousand pesos, even if you will appeal, by that time I will be there, Justice of the Supreme Court.'[2];

(b) `You are better than Director Somido? Are you better than Director Chua? Are you here to supervise Somido? Your office is wasting funds for one prosecutor who is doing nothing.'[3];

(c) `Just because your son is always nominated by the JBC to Malacañang, you are acting like that! Do not forget that the brain of the child follows that of their (sic) mother'[4]; and

(d) Justice Ong often asked lawyers from which law schools they had graduated, and frequently inquired whether the law school in which Justice Hernandez had studied and from which he had graduated was better than his (Justice Ong's) own alma mater.

and (d) manifest partiality and gross ignorance of the law (grounded on the fact that Criminal Case No. 25801, entitled *People v. Puno*, was dismissed upon a demurrer to evidence filed by the accused upon a finding that the assailed contracts subject of the criminal case had never been perfected contrary to the evidence of the Prosecution, the dismissal order being signed by all three respondents).

In the Decision of August 24, 2010, we explained as follows:

A.

Respondents' Violation of the Provisions of PD 1606 and
Revised Internal Rules of the Sandiganbayan

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We find that the procedure adopted by respondent Justices for their provincial hearings was in blatant disregard of PD 1606, as amended, the Rules of Court, and the Revised Internal Rules of the Sandiganbayan. Even worse, their adoption of the procedure arbitrarily denied the benefit of a hearing before a duly constituted Division of the Sandiganbayan to all the affected litigants, including the State, thereby rendering the integrity and efficacy of their proceedings open to serious challenge on the ground that a hearing before a duly constituted Division of the Sandiganbayan was of the very essence of the constitutionally guaranteed right to due process of law.

Judges are not common individuals whose gross errors men forgive and time forgets. They are expected to have more than just a modicum acquaintance with the statutes and procedural rules. For this reason alone, respondent Justices' adoption of the irregular procedure cannot be dismissed as a mere deficiency in prudence or as a lapse in judgment on their part, but should be treated as simple misconduct, which is to be distinguished from either gross misconduct or gross ignorance of the law. The respondent Justices were not liable for gross misconduct - defined as the transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence, or the corrupt or persistent violation of the law or disregard of well-known legal rules - considering that the explanations they have offered herein, which the complainant did not refute, revealed that they strove to maintain their collegiality by holding their separate hearings within sight and hearing distance of one another. Neither were they liable for gross ignorance of the law, which must be based on reliable evidence to show that the act complained of was ill-motivated, corrupt, or inspired by an intention to violate the law, or in persistent disregard of well-known legal rules; on the contrary, none of these circumstances was attendant herein, for the respondent Justices have convincingly shown that they had not been ill-motivated or inspired by an intention to violate any law or legal rule in adopting the erroneous procedure, but had been seeking, instead, to thereby expedite their disposition of cases in the provinces.

Nonetheless, it remains that the respondent Justices did not ensure that their proceedings accorded with the provisions of the law and procedure. Their insistence that they adopted the procedure in order to expedite the hearing of provincial cases is not a sufficient reason to entirely exonerate them, even if no malice or corruption motivated their adoption of the procedure. They could have seen that their procedure was flawed, and that the flaw would prevent, not promote, the expeditious disposition of the cases by precluding their valid adjudication due to the nullifying taint of the irregularity. They knew as well that the need to expedite their cases, albeit recommended, was not the chief objective of judicial trials. As the Court has reminded judges in *State Prosecutors v. Muro*, viz:

Although a speedy determination of an action or proceeding implies a speedy trial, it should be borne in mind that speed is not the chief objective of a trial. Careful and deliberate consideration for the administration of justice is more important than a race to end the trial. A genuine respect for the rights of all parties, thoughtful consideration before ruling on important questions, and a zealous regard for the just administration of law are some of the qualities of a good trial judge, which are more important than a reputation for hasty disposal of cases.

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What is required on the part of judges is objectivity. An independent judiciary does not mean that judges can resolve specific disputes entirely as they please. There are both implicit and explicit limits on the way judges perform their role. Implicit limits include accepted legal values and the explicit limits are substantive and procedural rules of law.

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinate to the "primordial necessity of order in the social life."

Relevantly, we do not consider the respondent Justices' signing of the orders issued during the flawed proceedings as a form of falsification or dishonesty, in that they thereby made it appear that they had all been physically present when the truth was different. Such act merely ensued from the flawed proceedings and cannot be treated as a separate offense.

B.

Unbecoming Conduct of Justice Ong and Justice Hernandez

The Court approves the Court Administrator's finding and recommendation that no evidence supported the complainant's charge that Justice Ong and Justice Hernandez had uttered the improper and intemperate statements attributed to them.

A review of the transcripts of the stenographic notes for the hearings in which the offensive statements were supposedly uttered by them has failed to substantiate the complainant's charge. In the absence of a clear showing to the contrary, the Court must accept such transcripts as the faithful and true record of the proceedings, because they bear the certification of correctness executed by the stenographers who had prepared them.

Even so, Justice Ong and Justice Hernandez admitted randomly asking the counsels appearing before them from which law schools they had graduated, and their engaging during the hearings in casual conversation about their respective law schools. They thereby publicized their professional qualifications and manifested a lack of the requisite humility demanded of public magistrates. Their doing so reflected a vice of self-conceit. We view their acts as bespeaking their lack of judicial temperament and decorum, which no judge worthy of the judicial robes should avoid especially during their performance of judicial functions. They should not exchange banter or engage in playful teasing of each other during trial proceedings (no matter how good-natured or even if meant to ease tension, as they want us to believe). Judicial decorum demands that they behave with dignity and act with courtesy towards all who appear before their court.

Indeed, Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary clearly enjoins that:

Section 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

We point out that publicizing professional qualifications or boasting of having studied in and graduated from certain law schools, no matter how prestigious, might have even revealed, on the part of Justice Ong and Justice Hernandez, their bias for or against some lawyers. Their conduct was impermissible, consequently, for Section 3, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary, demands that judges avoid situations that may reasonably give rise to the suspicion or appearance of favoritism or partiality in their personal relations with individual members of the legal profession who practice regularly in their courts.

Judges should be dignified in demeanor, and refined in speech. In performing their judicial duties, they should not manifest bias or prejudice by word or conduct towards any person or group on irrelevant grounds. It is very essential that they should live up to the high standards their noble position on the Bench demands. Their language must be guarded and measured, lest the best of intentions be misconstrued. In this regard, Section 3, Canon 5 of the New Code of Judicial Conduct for the Philippine Judiciary, mandates judges to carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff, and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

In view of the foregoing, Justice Ong and Justice Hernandez were guilty of unbecoming conduct, which is defined as improper performance. Unbecoming conduct "applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method."

C.

Respondent Justices Not Guilty of Manifest Partiality

The charge of manifest partiality for issuing the resolution granting the demurrer to evidence of the accused in Criminal Case No. 25801 is dismissed. As already mentioned, this Court upheld the assailed resolution on June 5,

2006 in G. R. No. 171116 by declaring the petition of the Office of the Special Prosecutor assailing such dismissal to have "failed to sufficiently show that the Sandiganbayan had committed any reversible error in the questioned judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction."

In their Joint Motion for Reconsideration, Justice Ong and Justice Hernandez make it clear that they:

[A]ccept with all humility, and therefore, will no longer contest the Honorable Court's finding that the proceedings they had adopted in their provincial hearings fell short of what the provisions of the law and rules require. For such shortcoming, respondents Ong and Hernandez can only express their regret and apology.

Nonetheless, Justice Ong and Justice Hernandez pray for exoneration, contending that they are not liable for simple misconduct despite the irregularity of their conduct for the simple reason that, as the Decision has indicated, they "have not been ill-motivated or inspired by an intention to violate any law or legal rules in adopting the erroneous procedure, but had been seeking, instead, to thereby expedite their disposition of cases in the provinces;" their actions were not willful in character or motivated by a "premeditated, obstinate or intentional purpose;" or even if their actions might be "irregular, wrongful, or improper," such could not be characterized as simple misconduct necessitating administrative sanction.

Also, Justice Ong and Justice Hernandez posit that they cannot be made accountable for unbecoming conduct because they admittedly posed questions on the law schools of origin of the counsel appearing before them; that their propounding the queries, per se, did not justify a finding of unbecoming conduct on their part considering that they thereby never derided any law school or belittled the capabilities of lawyers on the basis of their school affiliations, nor exhibited bias for or against any lawyer based on their alma mater.

In the alternative, Justice Ong prays that the sanction imposed upon him be made equal to that meted on Justice Hernandez. He "implores the Honorable Court to re-examine the propriety of imposing a different and heavier penalty against him and take into due consideration its own pronouncement in its decision that 'the Sandiganbayan is a collegial court,' and 'in a collegial court, the members act on the basis of consensus or majority rule.'"

For her part, the complainant insists that respondent Justices be found guilty of all administrative charges made against them; and that the penalties or chastisement be increased to be commensurate to their infractions.

Ruling

Finding the arguments of the complainant to be matters that the Court fully dealt with and discussed in the Decision, and there being no other substantial matters raised by her, we deny her Motion for Reconsideration (of the Honorable Court's Decision Dated 1 September).

We deny the plea of Justice Ong and Justice Hernandez for complete exoneration, considering what we held in the Decision, which we reiterate hereunder, as follows:

Respondent Justices cannot lightly regard the legal requirement for all of them to sit together as members of the Fourth Division "in the trial and determination of a case or cases assigned thereto." The information and evidence upon which the Fourth Division would base any decisions or other judicial actions in the cases tried before it must be made directly available to each and every one of its members during the proceedings. This necessitates the equal and full participation of each member in the trial and adjudication of their cases. It is simply not enough, therefore, that the three members of the Fourth Division were within hearing and communicating distance of one another at the hearings in question, as they explained in hindsight, because even in those circumstances not all of them sat together in session.

Indeed, the ability of the Fourth Division to function as a collegial body became impossible when not all of the

members sat together during the trial proceedings. The internal rules of the Sandiganbayan spotlight an instance of such impossibility. Section 2, Rule VII of the Revised Internal Rules of the Sandiganbayan expressly requires that rulings on oral motions made or objections raised in the course of the trial proceedings or hearings are to be made by the Chairman of the Division. Obviously, the rule cannot be complied with because Justice Ong, the Chairman, did not sit in the hearing of the cases heard by the other respondents. Neither could the other respondents properly and promptly contribute to the rulings of Justice Ong in the hearings before him.

Moreover, the respondents' non-observance of collegiality contravened the very purpose of trying criminal cases cognizable by Sandiganbayan before a Division of all three Justices. Although there are criminal cases involving public officials and employees triable before single-judge courts, PD 1606, as amended, has always required a Division of three Justices (not one or two) to try the criminal cases cognizable by the Sandiganbayan, in view of the accused in such cases holding higher rank or office than those charged in the former cases. The three Justices of a Division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding such cases. The tighter standard is due in part to the fact that the review of convictions is elevated to the Supreme Court generally via the discretionary mode of petition for review on certiorari under Rule 45, Rules of Court, which eliminates issues of fact, instead of via ordinary appeal set for the former kind of cases (whereby the convictions still undergo intermediate review before ultimately reaching the Supreme Court, if at all).

In *GMCR, Inc. v. Bell Telecommunication Philippines, Inc.*, the Court delved on the nature of a collegial body, and how the act of a single member, though he may be its head, done without the participation of the others, cannot be considered the act of the collegial body itself. There, the question presented was whether Commissioner Simeon Kintanar, as chairman of the National Telecommunications Commission (NTC), could alone act in behalf of and bind the NTC, given that the NTC had two other commissioners as members. The Court ruled:

First. We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.

Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.

The foregoing observations made in *GMCR, Inc.* apply to the situation of respondent Justices as members of the Fourth Division. It is of no consequence, then, that no malice or corrupt motive impelled respondent Justices into adopting the flawed procedure. As responsible judicial officers, they ought to have been well aware of the indispensability of collegiality to the valid conduct of their trial proceedings.

As to the argument of Justice Ong and Justice Hernandez against this Court's finding of unbecoming conduct on their part, the matter has been fully addressed in the Decision of August 24, 2010.

We hold to be not well taken the urging of Justice Ong that the penalty imposed upon him be similar to that meted upon Justice Hernandez.

The variance in the responsibilities of respondent Justices as Members of their Division compel the differentiation of their individual liabilities. Justice Ong, as the Chairperson, was the head of the Division under the Internal Rules of the Sandiganbayan, being the most senior Member, and, as such, he possessed and wielded powers of supervision, direction, and control over the conduct of the proceedings of the Division. This circumstance alone provided sufficient justification to treat Justice Ong differently from the other respondents.

Moreover, we have noted in the Decision that in the exercise of his powers as Chairman of the Fourth Division, Justice Ong exuded an unexpectedly dismissive attitude towards the valid objections of the complainant, and steered his Division into the path of procedural irregularity; and wittingly failed to guarantee that proceedings of the Division that he chaired came within the bounds of substantive and procedural rules. To be sure, Justice Hernandez and Justice Ponferrada did not direct and control how the proceedings of the Division were to be conducted. Their not being responsible for the direction and control of the running of the Division and their having relied without malice on the Justice Ong's direction and control should not be reproved as much as Justice Ong's misconduct. Hence, their responsibility and liability as Members of the Division were properly diminished.

WHEREFORE, the Motion for Reconsideration (of the Honorable Court's Decision Dated 1 September) dated September 15, 2010 of complainant Assistant Special Prosecutor III Rohermia J. Jamsani-Rodriguez; and the Joint Motion for Reconsideration dated September 14, 2010 of Associate Justice Gregory S. Ong and Associate Justice Jose R. Hernandez are denied for lack of merit.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Brion, Del Castillo, Villarama, Jr., and Sereno, JJ., concur.

Nachura, J., I maintain my original dissent.

Leonardo-De Castro and Peralta, JJ., no part.

Abad, J., I maintain my dissenting vote.

Perez, J., no part. acted on matter as Court Adm.

Mendoza, J., I maintain my earlier vote.

[1] Decision, p. 26.

[2] Utterance made by Justice Ong in open court against the complainant.

[3] Utterance made by Justice Hernandez in open court against Prosecutor Hazelina Tujan-Militante, who was then merely observing the trial proceedings from the gallery.

[4] Utterance made by Justice Hernandez in open court against Atty. Pangalangan, father of former U.P. College of Law Dean Raul C. Pangalangan.

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