ROLANDO BARTOLOME, COMPLAINANT, VS. HON. JUAN DE BORJA, DISTRICT JUDGE, BRANCH XX, COURT OF FIRST INSTANCE, MANILA, RESPONDENT.

A.M. No. 1096-CFI. May 31, 1976

Ponente: FERNANDO, J.

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FERNANDO, J.:

Administrative charges usually arise from a deep sense of grievance on the part of complainants. They are often, as a result, made to appear much graver than the facts warrant. Even with due allowance made for that tendency, what is evident on a most cursory appraisal of these cases against respondent Judge Juan de Borja of the Court of First Instance of Manila, is that no curb was placed on such propensity to exaggerate matters. The language of hyperbole was employed. In the first, he was accused by Rolando Bartolome, who identifies himself as a labor regulation officer in the Department of Labor, of oppression and deliberate violation of the penal laws, gross ignorance of the law and deliberate intent to place the Secretary of Labor and the Office of the President in a very bad light, as well as grave misconduct in the proceedings had with reference to a certiorari petition.[1] In the other, with a certain Francisco Grego as complainant, he is indicted for serious misconduct, characterizing what was done by him in a pending criminal case where the complainant was the accused as oppressive, whimsical, capricious, arbitrary and despotic.[2] Respondent Judge was required to answer each of the above complaints by the then Judicial Consultant, retired Justice Manuel P. Barcelona of the Court of Appeals. He did so in pleadings couched in a dispassionate tone with citation of the authorities to lend support to the way he discharged his functions. After a study of the records of the case, this Court is of the opinion that no disciplinary action is warranted. Another judge may have ruled differently on the questions submitted, but it would not conduce to the proper administration and the prized ideal of independence that a man on the bench is expected to cherish if he is held to such a strict degree of accountability that for the exercise of discretion, he is made to suffer. The complaints must be dismissed.

It was a detailed administrative complaint that was submitted by Rolando Bartolome in support of his charges that there was oppression and deliberate violation of the Anti-Wire Tapping Act,[3] as well as the provisions on libel in the Revised Penal Code.[4] In essence the gravamen of such charges consisted of respondent Judge allowing the replay of a taped telephone conversation between complainant and Adelina Velasco who with her father was accused of violating the Minimum Wage Law and found guilty thereof by the Department of Labor. The matter was then elevated in a petition for prohibition and mandamus filed with the Court of First Instance and assigned to the sala of respondent Judge[5] to show the grave abuse of discretion as well as the motivation of the complainant against them. Permission was sought for the court to listen to a taped telephone conversation between her and the complainant. It was made at her instance without the knowledge of the latter. The lower court granted the request. Information derogatory to complainant thus came to light. Moreover, certain portions of the testimony of Adelina Velasco were likewise damaging to his reputation. Complainant is most vehement in his accusation that respondent Judge's actuation was not only oppressive in character but likewise violative of the aforesaid penal

statutes. It was also characterized by him as manifesting gross ignorance of the law as well as deliberate intent to place the Secretary of Labor and the President "in a very bad light," all of which he summarized as constituting grave misconduct that would justify the removal of respondent Judge. In the answer submitted by respondent Judge, he noted that while there were three separate headings in the complaint, the discussion "is rather repetitious and, in parts at least, disorganized, [he therefore] found it more convenient to take up the matters involved in the order they are discussed by complainant."[6] Then came an analysis of the Anti-Wire Tapping Act[7] to show there was no violation thereof on his part. Then respondent Judge referred to the next main charge which dealt with "the admission of allegedly libelous testimony."[8] It is his submission that as a matter of law, he could not refuse the introduction of any evidence as long as the adverse party does not object to it. Furthermore, he pointed out that considering the nature of the petition for prohibition and mandamus, he could not very well refuse evidence of such character, adding that Solicitor Kilayko, who represented respondent public officials did not interpose any objection.[9] It is not amiss to refer to what was stressed in the opening portion of his answer: "At the outset, I should like to make one general observation with respect to recurring statements in the letter-complaint to the effect that I 'deliberately' committed one thing or another. In every case tried before my court, I have always tried to act deliberately, never rashly, impetuously or carelessly. I know of course that neither deliberation or deliberateness can ensure infallibility; they merely tend to safeguard against mindless or careless errors. In Civil Case No. 94698 I likewise acted — or at least tried to act — carefully and with deliberation but not for the purpose, design or motives alleged by complainant."[10]

The impression readily yielded by the other complaint lodged by Francisco Grego was his resolute determination to avoid being tried on a libel charge by respondent Judge. On at least five occasions, he filed motions for postponement alleging as ground that the Department of Justice had not finished reviewing the case. Thus while originally set by respondent Judge for arraignment and trial on March 6, 1975, and he was arraigned but not tried on that day, as of August 22, 1975, after such repeated postponements, the case had not been heard. On that day in view of the absence of complainant, respondent Judge issued a warrant for his arrest as was done on a previous occasion although later on set aside. Again, complainant felt he had a legitimate grievance as he was then suffering from pharyngitis and had to stay at home. On these occasions, when as could have been expected, the patience of respondent Judge was sorely tried, it was asserted by complainant that respondent acted not in a calm and dispassionate manner but with visible indignation. On September 8, 1975, he went to the Court of Appeals on certiorari to nullify the warrant of arrest and was able to obtain a restraining order. It is on the allegations of such a petition that he based this complaint to this Court. It likewise contained assertions that the respondent Judge, giving vent to his ire when postponements were sought or orders set aside, did employ intemperate and vile language, at times addressed to his wife, who was sent by him in his stead when he was unable to appear in person. When asked to comment respondent Judge did so on November 21, 1975. He stated there: "Since the letter-complaint of Francisco Grego adopted as his grounds therefor the allegations and annexes of his petition for certiorari in the Court of Appeals (CA-G.R. No. 04579), the undersigned is adopting as his answer to the letter-complaint his answer to said petition for certiorari, with annexes, and the decision of the Court of Appeals of October 22, 1975 dismissing the petition. It seems that this complainant, instead of facing manfully the charges in Crim. Case No. 20079 pending against him in this court, is trying to avoid at all cost going to trial, to the point of employing harassing tactics against the judge, of which the letter complaint is only the latest."[11] He summarized in his answer to the Court of Appeals what he considered the background facts of the pending libel case in his sala against complainant Francisco Grego: "1. The information in the case was filed on January 29, 1975 and an order for the arrest of the accused was issued on February 4, 1975. 2. The accused filed on February 12, 1975 a motion to reduce the amount of the bail bond from P1,750.00 to P1,000.00 and the same was granted by the Court on the same date.

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3. The bail bond was filed the following day. On February 17, 1975 the accused filed a motion to suspend arraignment and trial on the ground that the resolution of the fiscal who filed the case had been appealed to the Department of Justice. The motion was denied. 4. The accused was arraigned on March 6, 1975 and he entered a plea of not guilty. 5. The case was set for hearing on March 20, 1975 but postponed to April 18, 1975 upon motion of the accused. 6. On April 14, 1975 the accused filed a motion for postponement, which was denied by the Court, and when he failed to appear at the hearing he was ordered arrested. However, no warrant of arrest was actually issued and the case was again set for hearing on June 6, 1975. As the accused was not represented by counsel, a counsel de oficio was appointed for him in the person of Atty. Florencio Paredes. 7. On June 6, 1975 the accused again failed to appear at the hearing and another order for his arrest was issued. 8. On June 30, 1975, the accused filed a motion to lift order of arrest and confiscation of the bail bond and the motion was granted on the same date. The case was set for hearing on July 10, 1975. On that date the counsel de oficio moved for postponement and the hearing was reset for July 17, 1975. 9. The hearing on that date was not held because of a motion of the prosecuting fiscal for suspension of the proceedings, alleging that the Chief State Prosecutor had asked that the case be elevated to the Department of Justice for review. On August 22, 1975 the Court issued an order denying the motion to suspend proceedings. * * * On the same date the Court issued an order for the arrest of the accused and the confiscation of his bond. A motion for reconsideration was filed by the accused on the same date, which was granted by the Court on September 4, 1975, at the same time setting the case for hearing on October 2, 1975. 10. The accused filed a motion addressed to the Executive Judge on September 4, 1975 to transfer the case to another sala. The same was referred to Branch XX by the Executive Judge. On September 12, 1975 the Court issued an order considering the motion as one to have the Judge inhibit or disqualify himself from trying the case, on ground of bias, and denying the same as without merit. The Chief State Prosecutor has advised the prosecuting fiscal that the records of the case are being returned to the latter without action on the petition for review filed by the accused. The case may therefore be heard by the Court without further impediment, unless ordered otherwise by this Honorable Tribunal."[12] He likewise enclosed affidavits subscribed to by him and by his branch clerk of court denying "as falsifications and falsehoods certain allegations made in the petition regarding statements they allegedly made to petitioner and his wife."[13] It bears repeating that the Court of Appeals dismissed the certiorari petition of complainant in a decision promulgated on October 22, 1975, the opinion being penned by Justice San Diego with the concurrence of Justices Melencio Herrera and Domondon.

Complainants in these two administrative cases would have this Court remove respondent Judge for the acts imputed to him. They should have realized that for such a plea to prosper there must be a showing of "serious misconduct or inefficiency."[14] Proceedings of this character, according to In re Horrilleno,[15] as set forth in the opinion of Justice Malcolm, are "in their nature highly penal in character and to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt."[16] That 1922 decision has been subsequently adhered to.[17] It is quite obvious then, why as set forth at the outset, complainants must fail.

1. The charge of serious misconduct is without support, even on the assumption that no exaggeration was indulged in by complainants. That is evidently the case as far as the alleged grievance of Rolando Bartolome is concerned. What was objected to by him was the replay of a tape-recording which did cast reflection on his actuations. It is his contention that thereby respondent Judge was guilty of oppression. Clearly it would be to impart a novel concept to the accepted meaning of what is oppressive to assent to such a view. It is equally so as far as the alleged misconduct imputed to respondent by complainant Francisco Grego. His orders denying repeated motions for postponement and when appropriate issuing warrants of arrest for nonappearance of the accused did not fail to conform to the norm expected of a judge. So the Court of Appeal held in dismissing Grego's certiorari petition. In both cases therefore, respondent Judge clearly cannot be held accountable for

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misconduct, much less serious misconduct.

2. Now as to respondent Judge having laid himself open to charges of inefficiency. The complaint filed by Francisco Grego is bereft of any such allegation. If at all respondent perhaps would not have been proceeded against if he were less insistent on procedural regularity, more tolerant for the pleas for postponement, as well as the failure of complainant to appear in court when required to do so. On the other hand, the complaint filed by Polando Bartolome did indict respondent Judge for gross ignorance of the law. If such a charge could be substantiated, it would follow that inefficiency, serious inefficiency at that, could be imputed to respondent. The root cause of the matter, as was made plain before, was the replay of the taped telephone conversation between Adelina Velasco and complainant. The accusation is that in so allowing it, respondent violated the Anti-Wire Tapping Act.[18] In his answer to this Court, respondent Judge to refute such a contention relied on the second paragraph of its first section with this proviso: "That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offense mentioned in Sec. 3 hereof shall not be covered by this prohibition."[19] He further justified the action taken by him thus: "It may be further stated that, * * * the tape replay and the admission in evidence of the transcript thereof * * * were objected to on the other grounds, but never on the ground that they were in violation of the anti-wire tapping law, RA 4200. Apparently, Solicitor Kilayko, representing the respondent officials, [in Civil Case No. 946987] was satisfied, after hearing the testimony that Adelina Velasco, with whom complainant had the tape recorded telephone conversation, was the one who 'initiated' or took a recording of the conversation, that there was no violation of the prohibition of sections 1 to 3 of RA 4200 because the recording was taken by one of the parties to the conversation or that the use of the tapes was authorized by the above-quoted proviso of section 1. The failure of Solicitor Kilayko to object to the replay of the tape recording or the transcripts thereof on the ground that they were in violation of the anti-wire tapping law, cannot be imputed to his ignorance of that law because he tried to cross-examine Adelina Velasco precisely for the reason, as he manifested, that 'we were trying to find out whether there was any violation of any law in the tape recording of telephone conversation' * * * In the circumstances mentioned above, and finding that the grounds offered against the replay (to wit, that 'it was sufficiently established that his voice is that of Rolando Bartolome's voice,' quoted on p. 2 of the complaint) and the grounds (‘hearsay and self-serving and immaterial') offered against the transcript * * * of the tape recording * * * to be untenable, I believed that as a judge I had no alternative except to allow the replay and to admit the transcript in evidence."[20] Complainant Grego would likewise indict respondent Judge for gross ignorance of the law when instead of merely conforming to the rules and regulations of the Department of Labor, he did rely on the explicit wording of Presidential Decree No. 21. If there is an awareness on the part of complainant of the ruling of this Court, he ought to have realized that as held in Nation Multi Service Labor Union vs. Agcaoili,[21] the explicit wording of the decree is controlling. Neither can respondent Judge be held accountable for entertaining the petition for as was decided by this Court in San Miguel Corporation vs. Secretary of Labor,[22] the judiciary possesses the power to review acts of administrative agencies exercising quasi-legislative power in appropriate cases especially so when a due process question is involved. It would seem, therefore, that respondent Judge, far from being ignorant, acted after due deliberation in the light of his understanding of statutes or presidential decrees, as well as decisions of this Tribunal. Even on the assumption, however, that his interpretation was erroneous, still he could not be held accountable for gross ignorance of the law. At the most, he could have been mistaken. That does not render him liable to administrative sanction. As was declared by the then Chief Justice Makalintal in Vda. de Zabala vs. Pamaran:[23] "No one, called upon to try the facts or interpret the law in the process of administering justice, can be infallible in his judgment."[24] In the complaint of Rolando Bartolome, characterized by prolixity, there is likwise reference to the possible violation of the provisions of the Revised Penal Code on libel as well as the Civil Code. All that needs be said is that if it were prepared by him unaided — he is a layman — it is understandable why the conclusions reached by him on such questions do not bear the mark of orthodoxy. On the other hand, if he

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relied on a legal practitioner, it is quite probable that the one consulted, even if possessed of the requisite skill, did try to lend plausibility to what at bottom are essentially groundless charges by a rather strained reading of legal doctrines. What emerges clearly then is that the failing of inefficiency cannot be imputed to respondent Judge.

3. In the light of the foregoing, there would have been nothing amiss if the two complaints were summarily dismissed. A brief opinion then would have sufficed. Nonetheless, it was felt more appropriate to explain the action taken by the Court in some detail, conformably to its policy of assuring each and every complainant that due attention is paid to any administrative charge against a member of the judiciary. As was noted in Tobias vs. Ericta:[25] "The constitutional right to a petition, to enable the citizen to air his grievances, would certainly be emasculated if the response of the governmental body to which it is addressed is one of indifference. The fate of the people and the supremacy of the Constitution would thereby be sorely tested. What is worse, a safety valve against a violent reaction would be closed. This constitutional guarantee requires then that complaints against officialdom be seriously attended to. Where meritorious, the remedy could be supplied. If found to be devoid of substance, the party charged is vindicated with the complainant having the satisfaction of at least having been listened to. There is thus fidelity to what the Constitution ordains."[26] There is this additional beneficial result of such a policy. It emphasizes even more the need for occupants of the bench to live up to the ideal of a disinterested and impartial arbiter, dispensing justice with an even hand in a calm and dispassionate manner. For the appearance, no less than the reality of justice, does count. As far as the behavior of a trial judge is concerned, however, it is not realistic to assume, considering the nature and the burden laid on his shoulders, that he will at all times personify equanimity. It is understandable if there may be occasions when he is visibly annoyed or irked and that he would react accordingly. Francisco Grego did complain of such conduct on the part of respondent. It could have happened thus, but certainly complainant ought to have realized that his stubbornness in seeking postponements and his failure to be present at the scheduled hearings could not have been expected to have gone unnoticed or to have been overlooked. Such being the case, there is nothing objectionable to the use of vigorous and strong language to characterize what for the judge would be attempts to obstruct the administration of justice. This is not to condone resort to what had been referred to as an epithetical response. If there be display of wit or sarcasm, however, that is not to be deplored. They are qualities associated, as Shaw noted, with intellectuals. There certainly can be no objection to having people on the bench gifted with such talent, although Cardozo would counsel moderation. For it is a truism that the law is both a noble and learned profession.

WHEREFORE, the charges of Rolando Bartolome and of Francisco Grego are dismissed for lack of merit. Let a copy of this resolution be entered on the record on Respondent Judge Juan de Borja.

Castro, C.J., Teehankee, Barredo, Makasiar, Antonio, Esguerra, Muñoz Palma, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., is on leave.

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[1] Administrative Matter No. 1096-CFI, filed with the Supreme Court on October 28, 1975.

[2] Administrative Matter No. 1114-CFI, filed with the Supreme Court on September 23, 1975.

[3] Republic Act No. 4200 (1965).

[4] Title Thirteen, Chapter I, Articles 353-357 of the Revised Penal Code, Act No. 3815 (1932).

[5] Civil Case No. 94698 filed with the Court of First Instance of Manila.

[6] Answer of Respondent Judge, 2.

[7] Republic Act No. 4200.

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[8] Answer of Respondent Judge, 9.

[9] Ibid, 10-12.

[10] Ibid, 1.

[11] 2nd Indorsement dated November 21, 1975.

[12] Answer of respondent Judge, 1-3.

[13] Ibid, 3.

[14] According to Section 67 of the Judiciary Act:

> "No District Judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist, in the judgment of the Supreme Court, involving serious misconduct or inefficiency, for the removal of said judge from office after the proper proceedings." Republic Act No. 296 as amended (1948).

[15] 43 Phil. 212 (1922).

[16] Ibid., 215.

[17] Cf. Enriquez vs. Araula, Adm. Case No. 270-J, Dec. 18, 1973, 54 SCRA 232; Tombo vs. Medina, Adm. Case No. 929, Jan. 17, 1974, 55 SCRA 13; Lampauog vs. Villarojo, Adm. Matter No. 381-MJ, Jan. 28, 1974, 55 SCRA 304.

[18] Republic Act No. 4200.

[19] Answer of Respondent Judge, 2.

[20] Ibid, 3-4.

[21] L-39741, May 30, 1975, 64 SCRA 274.

[22] L-39195, May 16, 1975, 64 SCRA 56.

[23] Adm. Case No. 200-J, June 10, 1971, 39 SCRA 430.

[24] Ibid, 433.

[25] Adm. Case No. 242-J, July 29, 1972, 46 SCRA 83.

[26] Ibid., 87.

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