

**RODRIGO CORTEZ, COMPLAINANT, VS. CITY JUDGE AVELINO
CONSTANTINO, BRANCH XII, MANILA, RESPONDENT.***A.M. No. 1393-CTJ. January 20, 1977*

Ponente: FERNANDO, J.

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From a judgment of acquitting an accused in a criminal case, respondent City Judge Avelino Constantino of Branch XII, Manila had to face an administrative complaint for grave abuse of discretion from Rodrigo Cortez, the aggrieved party in a case for slight physical injuries against one Cerilo Regala. In an eleven-page decision of acquittal, respondent Judge explained in some detail why the version of they accused Regala as to how the fist fight resulting in the injuries inflicted arose, was more credible. Thus: "Pitted against the testimony of the complainant, the Court finds the story of the accused to be the more credible version. Witness Cortez insists that he was not drunk, but his own medical certificate (Exhibit 'A') states that he had alcoholic breath (Exhibit 'A-1') which, belies his claim that he had only a small sip of hard drinks. The Court is thus persuaded that he stayed longer than five minutes with his friend Ricardo San Diego who invited him for a drink. His testimony that he waited two hours to get that short ride from Concepcion to the PWU bears a closer look. San Diego was not presented to support the alleged five minutes-only drink with complainant. His earlier statement that he did not drink at the eatery near the PWU* * *, he contradicted on rebuttal as he testified that he did take a small quantity of alcohol in that restaurant at the back of PWU* * *. A five-minute sip of liquor would not be enough to register a positive finding of alcoholic breath when examined several hours later. He was found to have alcoholic breath, because he had imbibed such quantity of liquor sufficient to put him in that condition where the outward manifestation is seen in a person when he is tipsy. The legs become shaky and he is no longer firm in his steps. His reflexes are generally slow and he is prone to be clumsy. A misstep resulting in a stumble or falling down is very likely. He is not yet intoxicated or dead drunk, as more commonly known, because if he is at this stage, he can no longer move on his own unaided. It was in this inebriated state when he hailed the Blumentritt-bound jeepney and while on board, he was exhibiting the signs of a person who was going to vomit. Emphasis is placed on Cortez's condition, because it was the root cause of the incident. Had he been sober, the accused would have normally and easily alighted from the jeepney which is being done everyday by thousands of front seat jeepney passengers. But because a co-passenger has absorbed so much alcohol as to adversely affect his movement and his thinking, a misunderstanding arose on the trivial matter of alighting. At this point, it is a touch-and-go situation on the question of credibility of the protagonists. Complainant would say that he was simultaneously pushed and boxed as he was not quick to alight in order to give way to the accused. The latter maintains that complainant slipped while alighting. Angered because of his fall which he blames on the accused, he took a punch at him. A fist fight ensued as the accused retaliated. The complainant, in the condition that he was, naturally got the worse of the fisticuffs. Cortez claims that the beating he received was the result of mauling by Regala and 2 alleged bystanders who aided the accused. This was denied by Regala and it appear[s] in the records that he was indeed alone. The crime report (Exhibit 'D'), which embodies the complaint of Cortez, does not make mention of any confederate. The information did not say that accused was in company with others when the alleged offense was

committed. Moreover, it was raining hard that evening and it was not likely that a mere and innocent bystander would join the fray just for the fun of it. Verily, people usually [avoid] and [shy] away from trouble. Similarly, those who are drunk are avoided and kept at a distance by sober men and so, it is hard to believe that the accused would deliberately pick on the complainant and [engage] him in a fist fight, except to defend himself. Under the above facts and circumstances, the Court can find no clear guilt in the accused."^[1]

The verdict, as noted, was one of acquittal. From the above excerpt of the assailed decision, it is quite evident why the administrative, complaint for grave abuse of discretion lacks legal foundation. So Acting Judicial Consultant Lorenzo Relova recommended. We agree.

It certainly would be less than fair if a judge, who had so meticulously examined the evidence and had so carefully prepared a decision explaining why he came to the conclusion he did, could be found liable for grave abuse of discretion. This is another one of those instances where the leading *In re Horilleno* decision^[2] of Justice Malcolm finds application. Respondent can in no wise be held to have laid himself open to the accusation that his act was corrupt or "inspired by an intention to violate the law, or [was] in persistent disregard of well-known legal rules."^[3] Far from it.

WHEREFORE, the administrative complaint against respondent Manila City Judge Avelino Constantino is dismissed. Let a copy of this resolution be spread on the record.

Barredo, Antonio, and Concepcion, Jr., JJ., concur.

Aquino, J., concurs. There is no showing that the judgment of acquittal is an unjust judgment rendered maliciously or by reason of inexcusable negligence or ignorance. (*In re Climaco*, Adm. Case No. 134-J, January 21, 1974, 55 SCRA 107.

[1] Decision in Criminal Case F-162779 of the City Court of Manila entitled *People v. Regala*, 8-10, Annex A of Complaint.

[2] 43 Phil. 212 (1922).

[3] *Ibid*, 214. Cf. *Enriquez v. Araula*, Adm. Case No. 270-J, Dec. 18, 1973, 54 SCRA 232; *Tombo v. Medina*, Adm. Case No. 929, Jan. 17, 1974, 55 SCRA 13; *Lampauog v. Villarojo*, Adm. Matter No. 381-MJ, Jan. 28, 1974, 55 SCRA 304; *Bartolome v. De Borja*, Adm. Matter No. 1096, May 31, 1976; *Amosco v. Magro*, Adm. Matter No. 439-MJ, Sept. 30, 1976.

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