

LYDIA S. NOCUM, COMPLAINANT, VS. HON. WILLELMO C. FORTUN, RESPONDENT.*A.M. No. 534-CFI. May 20, 1975*

Ponente: BARREDO, J.

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Administrative complaint filed by Lydia S. Nocum, of Pagadian City, against respondent Judge Willelmo C. Fortun for alleged immorality in his allegedly having succeeded in having sexual intercourse with her, an applicant for a position as stitcher in his court, against her will.

The circumstances surrounding the charge and the proceedings that have taken place since its filing are related in the report of Justice Conrado M. Vasquez of the Court of Appeals who was designated by the Supreme Court to conduct the investigation, as follows:

"In a resolution of the Supreme Court dated February 6, 1974, the above-entitled administrative case was referred to the undersigned for investigation, report and recommendation. The record of the case was forwarded to the undersigned by means of a letter of Judicial Consultant Manuel P. Barcelona dated February 25, 1974.

THE CHARGE

This administrative complaint was started by a letter of complainant Lydia S. Nocum, a 32-year old housekeeper, residing at Pagadian City, dated September 11, 1973, addressed to His Excellency, the President of the Philippines, complaining against respondent Hon. Willelmo C. Fortun, District Judge of the Court of First Instance, stationed at Pagadian City. The letter-complaint charges Judge Fortun with acts "unbecoming of a Judge". In her sworn statement attached to the letter-complaint executed on August 24, 1973, the complainant stated that she was applying for a position in the Court of First Instance of Zamboanga del Sur, presided over by Judge Fortun. When she followed up the said application with Judge Fortun, the latter assured her that she would be employed in his court, and he even instructed her to prepare all the necessary papers to support her appointment. One Sunday afternoon in February, 1972 while the complainant was attending to her business at the pier in Pagadian City, Modesto Radaza, the bailiff in the court of Judge Fortun, came to her and told her that Judge Fortun wanted to see her in his residence located at Balangasan, Pagadian City, allegedly because the Judge wanted her appointment papers, inasmuch as he was leaving for Manila the following day. Complainant wasted no time in going to the residence of the respondent bringing with her the papers needed for her appointment. When she and Radaza arrived in the house where Judge Fortun was staying, she saw the Judge in his pajamas. The respondent then ordered Radaza to run some errands. After Radaza left, Judge Fortun closed the door and the windows of the house. When the complainant remonstrated against the said actuations of the respondent, the latter told the complainant that her appointment as a "court stitcher" could be assured if she would submit to his sexual desires. Shocked and surprised, the complainant pleaded with the respondent not to molest her. The respondent, however, embraced the complainant, kissed her and touched her private parts. The respondent then started to drag the complainant towards his bedroom. She resisted but was unsuccessful in freeing herself from his hold. While inside the bedroom, the complainant was pushed to the bed. As she laid flat on her back on the bed, the respondent placed himself on top of her. Despite her

resistance, the respondent succeeded in removing her panties and in consummating the sexual act with her. After satisfying his sexual desires, the respondent threatened the complainant, who was then in tears, not to tell anybody what happened. As the complainant was about to go home, she met Radaza to whom she revealed what the Judge did to her. Radaza advised the complainant to keep the matter to herself and not to tell her husband about it.

A separate affidavit of Modesto Radaza was likewise attached to the letter-complaint, wherein Radaza confirmed the allegations in the complainant's affidavit as to his supposed participation in the incident. He further stated that when he returned to the house of Judge Fortun, he asked the latter what he did to the complainant. In reply to the question, Judge Fortun simply smiled and laughed, clenched his fist with the thumb protruding between the forefinger and the middle finger and, at the same time, told him not to talk about it.

PROCEEDINGS TAKEN

The letter of the complainant was referred to the Secretary of Justice by Presidential Assistant Guillermo C. de Vega by means of a letter dated September 17, 1973. In a first indorsement dated October 2, 1973, Secretary of Justice Vicente Abad Santos forwarded the said complaint to the Supreme Court. In a separate letter dated October 26, 1973, Presidential Executive Assistant Jacobo C. Clave forwarded to Chief Justice Querube C. Makalintal of the Supreme Court, a copy of the same letter of the complainant and the affidavits of Modesto Radaza and of the complainant attached to the same.

The undersigned received the letter of the Judicial Consultant referring the case for report and investigation on March 4, 1974.

On March 5, 1974, your Investigator issued notice of the investigation which was set for April 1, 2, 3 and 4, 1974 at 2:00 o'clock in the afternoon in his office in the Court of Appeals Building, Ermita, Manila.

On March 19, 1974, Attys. Quijano and Arroyo entered their appearance as counsel for the respondent.

In a telegram dated March 22, 1974, the complainant requested that the investigation be held in Pagadian City, allegedly because she is penniless and has a six-month old child who is sickly. The same request was contained in another telegram of the complainant dated March 25, 1974. A follow-up telegram dated March 28, 1974 requested information as to the complainant's request that the investigation be conducted in Pagadian City. The respondent, himself, through counsel, moved for the postponement of the hearings set for April 1, 2, 3, and 4, 1974.

Considering the manifestation of the complainant of her desire to conduct the hearings in Pagadian City and the reasons given for the same which rendered it unlikely that the complainant would appear for the hearings set for April 1, 2, 3 and 4, 1974, and considering further that the respondent himself has moved for the postponement of said hearings, the undersigned issued an order resetting the investigation on May 2, 3, 6 and 7, 1974, all at 2:00 o'clock in the afternoon. In the same order, the parties were ordered to manifest their comments within five (5) days on the following:

- (1) Whether the respondent is willing to have the investigation conducted in Pagadian City;
- (2) Whether they would both agree to hold the investigation in some place other than Pagadian City but close enough to it, such as, Ozamis City or Cagayan de Oro City; and
- (3) Whether they would agree that, if the investigation is conducted in Pagadian City or in some other place readily accessible to the complainant, the reception of the evidence be delegated to some other officials, like a Judge of a Court of First Instance, a City or Municipal Judge or a Fiscal.

The complainant complied with the said order of the court by sending a telegram dated April 15, 1974, reiterating

her desire that the investigation be conducted in Pagadian and expressing conformity that the evidence may be presented before a fiscal or a representative of the Department of Justice.

In his "OPPOSITION" dated April 5, 1974, the respondent, through counsel, opposed the request of the complainant to transfer the investigation to Pagadian City on the grounds that such a procedure would destroy the confidential and private nature of this proceeding as provided in Section 6, Rule 140 of the Rules of Court; and that complainant is not as destitute as she pictures herself to be, she being subsidized in the prosecution of this complaint by highly placed politicians in the province of Zamboanga del Sur and Pagadian City.

In an order dated April 26, 1974, your Investigator cancelled the hearings set for May 2 and 3, 1974 due to his absence in Manila during said dates, without prejudice to holding the hearings scheduled for May 6 and 7, 1974 at 2:00 o'clock in the afternoon.

In a motion dated April 30, 1974, Atty. Joker P. Arroyo, counsel for the respondent, prayed for the postponement of the hearings set for May 6 and 7, 1974 on the ground that he was going to the United States on May 5 and will not be back until after June 20, 1974.

Neither the complainant nor the respondent appeared for the hearing scheduled on May 6, 1974; nor for the hearing set on May 7, 1974. On the latter date, your Investigator issued an order transferring the hearings of the case to June 21, 1974 and successive dates thereafter, until the same shall be finished. The complainant was warned that if she will not appear in the said hearing, the Investigator might be constrained to dismiss her complaint. The respondent was likewise warned that if he shall fail to appear, the Investigator will receive the evidence of the complainant in his absence.

On May 8, 1974, the Citizens Legal Assistance Office, through Atty. Eduardo R. Santos, entered its appearance as counsel for the complainant. On the same date, counsel for the complainant filed a motion praying that the investigation be conducted either at Pagadian City or Ozamis City.

On May 10, 1974, your Investigator issued an order informing the parties that the directive that he received from the Supreme Court was to conduct the investigation of this case in Manila. It was accordingly suggested that if the complainant wishes the investigation to be conducted elsewhere, she should take up the matter directly with the Supreme Court which alone can decide whether or not the request will be granted.

As reflected in the order dated April 22, 1974, your Investigator consulted with the Judicial Consultant as regards the possibility of holding the investigation in Pagadian City or some other place outside of Manila. Upon being informed by the Judicial Consultant that the Supreme Court would not look with favor on such a transfer of the site of the investigation, and there being no funds available for the purpose, the parties were advised that the hearings will be conducted in the office of the Investigator in the Court of Appeals Building in Manila.

On May 23, 1974, counsel for the complainant filed a "MOTION FOR LEAVE TO TAKE DEPOSITIONS OF COMPLAINANT AND HER WITNESSES". It was stated therein that the financial plight of the complainant and her witnesses does not permit them to go to Manila for the purpose of attending the investigation thereat. It was further prayed that the investigation be held in abeyance pending the taking of the depositions. This motion was undoubtedly prompted by a letter of Judicial Consultant Manuel P. Barcelona, addressed to the complainant, dated May 22, 1974, telling her that her request to hold the hearings in Pagadian City or Ozamis City may not be granted "for the reason that we cannot require Justice Vasquez to hold hearings outside of Manila, where his office is situated"; and advising her to file a motion with Justice Vasquez to authorize that her testimony and those of her witnesses be taken by deposition.

When the aforementioned motion for leave to take depositions was filed, it was accompanied by a copy of a

separate motion supposedly filed in the Supreme Court dated May 20, 1974 by the complainant wherein she prayed that the Supreme Court direct the Investigator to conduct the investigation of this case either at Pagadian City or Ozamis City.

In view of the aforementioned motion which was supposedly filed in the Supreme Court on May 20, 1974, your Investigator issued an order advising the parties that the investigation of this case is being suspended and held in abeyance pending notice of the resolution that the Supreme Court may make on the motion of the complainant that the investigation be conducted either in Pagadian City or Ozamis City. The parties were ordered to inform the undersigned Investigator - immediately upon receipt thereof of whatever action may be taken by the Supreme Court on the aforementioned motion.

The complainant was unheard from since then.

On October 22, 1974, the respondent, through counsel, filed a "MOTION TO DISMISS", alleging therein that due to the silence and failure of the complainant to press her complaint within the previous four (4) months, the complaint should be dismissed for lack of interest.

On October 24, 1974, your Investigator issued an order requiring the complainant to comment on the aforementioned motion to dismiss within ten (10) days from notice thereof. A copy of this order was sent to the complainant, as well as to her counsel Atty. Eduardo R. Santos of the Citizens Legal Assistance Office, both by registered mail. Atty. Santos claimed the registered mail on October 29, 1974, but failed to comment on the motion to dismiss. The record does not reveal whether the complainant received a copy of the said motion to dismiss.

On November 27, 1974, the respondent, through counsel, filed a "SUPPLEMENTAL MOTION TO DISMISS", reiterating his motion to dismiss due to the failure of the complainant and her counsel to comply with the order of the court dated October 24, 1974 to comment on the same within ten (10) days from notice.

On December 4, 1974, your Investigator issued an order, reading as follows:

"O R D E R

On October 22, 1974, the respondent, through counsel, filed a motion to dismiss the above-entitled administrative case on the ground that the complainant has failed to press the same after a considerable period of time. In an order issued on October 24, 1974, the undersigned Investigator ordered the complainant to comment on the said motion to dismiss within ten (10) days from notice thereof. A copy of the said order was sent to the complainant by registered mail. A separate copy was sent to complainant's counsel. Atty. Eduardo R. Santos of the Citizens Legal Assistance Office, who received the same by registered mail on October 29, 1974 as shown by the registry return receipt. Both the complainant and her counsel have been unheard from since then.

On November 29, 1974, the respondent filed a 'SUPPLEMENTAL MOTION TO DISMISS' adverting to the fact that the period granted to the complainant to comment on the motion to dismiss dated October 22, 1974 had long since expired, without a comment having been made.

This complaint was filed since September 11, 1973. It was referred to the Undersigned for investigation on February 25, 1974. A single piece of evidence has yet to be presented by the complainant. Needless to state, an expeditious termination of this proceeding is not only desirable but also imperative, in fairness both to the complainant whose complaint should be ventilated as soon as possible, and to the respondent whose honor and morality have been put to question. It may be added that an indefinite pendency of an administrative proceeding is always prejudicial to the public service, particularly if taken against someone like the herein respondent who is engaged in the most delicate task of administering justice.

WHEREFORE, in order to grant the complainant a last opportunity to express her comment on whether or not she still intends to prosecute her complaint against the respondent, the complainant is hereby given another period of ten (10) days from notice hereof within which to comment on the said motion to dismiss, with the warning that her failure to do so would be construed as a sign of lack of interest to prosecute the complaint, which could eventually lead to a dismissal of the same.

SO ORDERED.'

The aforequoted order was likewise ignored by the complainant and her counsel, both of whom were furnished with a copy of the same by registered mail. The copy sent to the complainant was eventually returned on March 4, 1975 and on the envelope containing the copy of the said order, it was stated that the 'addressee refused to receive' the said registered mail.

Inasmuch as complainant's counsel Atty. Eduardo R. Santos holds office with the Citizens Legal Assistance Office in Quezon City, your Investigator summoned Atty. Santos to appear personally before him to explain why he has not complied with the two successive orders of the court to comment on the motions to dismiss filed by the respondent. When Atty. Santos appeared before your Investigator, he stated that he likewise had failed to hear from the complainant despite two telegrams and two letters which he had addressed to the latter. It was for this reason that he was unable to comment on the motions to dismiss filed by the respondent.

RECOMMENDATIONS

There having been no hearings conducted nor evidence presented, your Investigator is not in a position to make any finding as to the merit of the charge filed against the respondent Judge. As matters stand, it is believed unlikely that the complainant would come to Manila with her witnesses to present her evidence at the investigation to be conducted in the office of your investigator in the Court of Appeals Building. It is a fact, however, that the complainant has not expressed a desire to press her charges against the respondent and has, instead, remained silent for almost ten (10) months now. She refused to claim, much less, answer communications addressed to her by her counsel and the two orders of your Investigator requiring her to comment on the motions of the respondent to dismiss her complaint for lack of interest to prosecute the same. Neither has your Investigator been informed as to the outcome of the supposed motion filed by Atty. Eduardo Santos in the Supreme Court requesting that the investigation be conducted either in Pagadian City or Ozamis City.

This administrative case has been pending for about a year and a half already. If no hearing has been had, it is due to the stubborn refusal of the complainant to appear before your Investigator in Manila to present evidence in support of her complaint. As already stated in the order of your Investigator dated December 4, 1974, an expeditious termination of this proceeding is not only desirable but also imperative in the interest of the public service and in fairness to the respondent, a Judge of First Instance engaged in the most delicate task of administering justice, whose honor and morality have been put to question.

It is accordingly most respectfully recommended that the complaint be dismissed for failure to prosecute the same."

We have examined and studied the records and found the foregoing report and recommendation to be fully justified.

Incidentally, it may be mentioned here that respondent vehemently and categorically denied the charge against him. Hereunder are pertinent portions of his comments filed in compliance with the resolution of this Court:

xxx xxx xxx

2. Respondent denies the averments in paragraph 1 of the affidavit-complaint, the truth of the matter being that sometime in February, 1972, when complainant, armed with a letter of recommendation from Carlos Parochó, private secretary of then Congressman Guillermo Sanchez of Agusan del Norte, and together with a male companion, came to respondent's sala at the provincial capitol of Zamboanga del Sur at Pagadian City, and applied for the position of stitcher, respondent, in the presence of court personnel, categorically told complainant that he cannot recommend her for said position because the Department of Justice would not allow its filling at said time, and moreover, it has already been committed to the recommendee of then Congressman Vicente Cerilles of Zamboanga del Sur.

3. Respondent denies the allegations in paragraphs 2, 3, 4, 5, and 6 of the affidavit-complaint, for being pure fabrications and concoctions, without any factual basis, and intended to harass, embarrass, discredit, and destroy respondent's honor, integrity, and reputation as a Judge, and indirectly, to smear and blacken the image of the Judiciary of which he is a member, the truth of the matter being that a week after the first time complainant came to respondent's office at the provincial capitol as averred above, said complainant, with a male companion, came to respondent's residence at Balangasan, Pagadian City, in the morning of a working day, at about 7:45 A.M., when respondent and his court employees were all at the veranda and about to leave for the office, and there she reiterated her application for the position of stitcher, at which occasion, respondent unequivocally told her, in the presence of said employees, that said position was already committed to the recommendee of then Congressman Cerilles, and he cannot recommend her. Complainant with her companion left dejectedly. Respondent and his court employees then proceeded to the provincial capitol. Since that day, respondent never saw the complainant again. Thus, the lurid account narrated in the affidavit-complaint dated August 24, 1973 as to an alleged happening on a Sunday afternoon in February, 1972, is but a figment of the imagination of complainant — a concoction designed to harass respondent, embarrass and discredit him, and block his chances of getting a transfer of assignment or promotion in the Judiciary.

Respondent vehemently denies the allegation that he is a man of bad moral character, the truth of the matter being that at no instance during his entire government career (since 1955) (He was researcher of Justice Secretary Abad Santos, 1955-57; private secretary of Justice Barrera and investigator, Supreme Court, 1959-68; researcher of Senator Pelaez, 1970-71.) has he committed any behavior that would stain or besmirch his name and honor and that of his family; that since August 22, 1971, when respondent assumed the functions of the office of a Judge, he has been discharging his duties to the best of his ability, knowledge, and training, without fear or favor to anyone, upholding the dignity of the court and the profession of law, and fired with only one ideal — to assist in moving the judicial machinery a little faster, that the people may not lose faith in the courts and its processes. In the pursuit of this goal, respondent has opted 'to change' established norms of behavior and practices and, naturally, created enemies and detractors. Respondent, since the middle part of 1972, has already become the object of harassment tactics and vicious intrigues, and the present complaint, is just one of them.

"A factual backdrop of respondent's various efforts to speed up the administration of justice, improve court procedure, instill efficiency among court personnel, uphold and maintain the dignity of the court and the independence of the Judiciary, which earned for respondent the reputation as 'Mindanao's Youngest and Fastest Judge', as referred to in the Times Journal issue of April 16, 1973, is hereto attached to give an insight into the actions and situations which caused to make respondent the object of harassments and intrigues. (See attached Factual Backdrop and Annexes.)

INSTANT COMPLAINT IS FALSE,
INHERENTLY IMPROBABLE, AND
PART OF HARASSING SCHEME

AGAINST RESPONDENT.

1. It is inherently improbable that the alleged incident really happened. According to the affidavit-complaint, the alleged incident occurred in February, 1972. Yet, why was the affidavit-complaint executed only on August 24, 1973, or after a lapse of more than one (1) year and six (6) long months from its alleged commission? An outraged woman, especially a married woman, will never let a day, week, much less, months or a year elapse without immediately reporting an alleged wrong committed by someone on her person to her husband or to the proper authorities, if it really did happen. Is this the natural reaction of an aggrieved party? The local press in Pagadian City (the Zamboanga Tribune and the Pagadian Times) would have grabbed on such juicy bit of news, if complainant informed them. The long and unusual delay in filing this complaint, casts serious and grave doubts as to its actual occurrence. Even on this score alone, the complaint ought to be dismissed outright.

2. It is inherently improbable and unbelievable that, as alleged in paragraph 5 of the affidavit-complaint, respondent assured complainant that if she kept silent about what happened, respondent will employ her. For if the incident really happened as alleged, respondent would have lost no time or would have exerted every effort in having complainant appointed to the position of stitcher she was applying for, if only to silence her from revealing the alleged incident. But records of the Department of Justice (now Supreme Court) will readily show that respondent never recommended complainant to said position. True to what he told complainant when she applied for said position in February, 1972, respondent recommended thereto the recommendee of Congressman Cerilles — one Mrs. Nicolasa B. Herrera, the present incumbent of said position.

3. It is inherently improbable and inconceivable that, as alleged in paragraph 5 of the affidavit-complaint, complainant was afraid to tell her husband what happened to her, after the alleged incident, as he might 'misunderstand' her. Why, since when did a husband misunderstand his wife for telling him what happened to her, if in truth and in fact, it did happen? And since when did a wife become afraid to tell her husband of an alleged wrong, especially a grave wrong, done to her person by somebody, if it was really done to her? Complainant's failure to tell her husband about the alleged incident leads to the conclusion that it really did not happen.

4. It is inherently improbable and unbelievable that, as alleged in paragraph 5 of the affidavit-complaint, complainant failed to report the incident to the authorities, because respondent is an 'influential' person. This assertion by complainant is false and absolutely without basis. Respondent is a total stranger in Pagadian City, and wields no political power or influence whatsoever.

5. It is inherently unbelievable and false that, as alleged in paragraph 5 of the affidavit-complaint, complainant told Modesto Radaza what happened and she followed his advice to 'keep silent about everything' and not tell her husband about the incident. Complainant is not even related to Radaza. Why would she follow Radaza's advice to keep silent about what happened, if it really did happen? Why, what strange hold does Radaza have over complainant that she would readily follow his advice, which by the way, is a wrong advice, as it would mean keeping secret a serious offense allegedly committed on her person by respondent?

By the way, who is Modesto Radaza? He is a nephew of Congressman Sanchez who was employed in respondent's office. However, due to his penchant for mischief, heavy drinking, and relationship with a KM member, respondent told Radaza that his actuations are improper and he might be constrained to terminate his services. Radaza resigned to accept another job at the provincial capitol which had to do with photography, since he is a good photographer. But the job which Radaza was banking on did not turn out to his liking, and he came back to respondent asking that he be reinstated in the court. By that time, Radaza already married the KM girl, Milagros Derecho. Then Congressman Sanchez even interceded for Radaza. However, respondent, faithful to his sworn duty to maintain the integrity and independence of the court, and sincerely believing that Radaza is unfit to be a member of the court personnel, refused to heed Radaza's request. Radaza became despondent, and respondent was informed that Radaza was heard to declare that he 'will destroy Judge Fortun.'

Indeed, both Radaza and herein complainant have axes to grind with respondent. Both their requests were

denied by respondent.

When this Honorable Supreme Court detailed respondent to preside over the vacant Branch I, Court of First Instance of Tarlac (Tarlac, Tarlac), on August 3, 1973, (Due to the troubled situation in Pagadian City, last July, 1973.) news of which was taken in Pagadian City as a 'promotion' for respondent, complainant and Radaza, perchance, abetted and assisted by other disgruntled elements, found the proper occasion to embarrass respondent Judge, and the Affidavit-Complaint was executed by complainant on August 24, 1973, before a city judge of Pagadian City.

6. It is highly improbable and inconceivable that respondent would commit the alleged act imputed to him by complainant, considering that complainant is a recommendee of Congressman Sanchez, one of the persons responsible for respondent's appointment to the Bench and respondent's 'ninong' on his wedding in 1956. How could respondent even for a moment think of offending complainant, the recommendee of the very person, to whom respondent owes an eternal debt of gratitude ('utang na loob')?" (Respondent's Comment, pp. 23-29, Rec.)

In the light of these allegations of respondent, which are under oath, and the attitude of complainant portrayed in the above report of Justice Vasquez, the Court sees no valid reason for further proceeding in this case.

WHEREFORE, the administrative complaint against respondent judge is hereby dismissed for failure to prosecute.

Makalintal, C.J., Fernando, Teehankee, Antonio, Esguerra, Munoz Palma, Aquino, Concepcion Jr., and Martin, JJ., concur.

Castro, J., concurs in the result.

Makasias J., was on official leave.

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