

SPOUSES WILFREDO BOYBOY AND LYDIA BOYBOY, PETITIONERS, VS. ATTY. VICTORIANO R. YABUT, JR., RESPONDENT.

Adm. Case No. 5225. April 29, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Ei incumbit probatio qui dicit, non qui negat.

“He who asserts, not he who denies,
must prove.”

This administrative case against Atty. Victoriano Yabut, Jr., stemmed from a complaint filed by spouses Wilfredo Boyboy and Lydia Boyboy accusing him of blackmail and extortion, and seeking his disbarment from the practice of law.

Complainant-spouses alleged that sometime in November 1999 respondent called complainant Dr. Lydia Boyboy at her clinic in Angeles City threatening to charge her with estafa before the NBI and cause the revocation of her physician’s license unless complainant paid him P300,000.00 informing her at the same time that he was in possession of incriminatory evidence against her; on 7 December 1999 respondent went to the clinic of Dr. Boyboy and personally served on her a subpoena from the NBI requiring complainants to appear in the investigation of the case for estafa through falsification of public documents which respondent filed against the complainants; the following day, complainant Wilfredo Boyboy visited respondent at his law office to discuss the case; respondent intimidated to Wilfredo Boyboy that he had already persuaded Atty. Cris Balancio, NBI Director for Region III, to dismiss the case for a consideration of P400,000.00.

Complainants further averred that, appalled by the increased demand, they arranged a meeting with the NBI Director to inquire about the demand for P400,000.00, and Atty. Balancio denied having made such a demand and reacted adversely to the name-dropping of respondent; that Atty. Balancio recommended an entrapment operation against respondent but, for lack of funds, the planned entrapment did not push through. Instead, complainants only filed a criminal complaint under Art. 282, The Revised Penal Code,[1] against respondent in connection with the blackmail and extortion incident.

Respondent denied the charge as unfounded, baseless and groundless, contending in his Answer that the disbarment case was deliberately resorted to by complainants to harass and make even with him as he filed criminal cases against the complaining spouses, and an administrative case against Dr. Lydia Boyboy. He narrated that he came to know complainants only when a certain Ms. Arlene Sto. Tomas sought his professional services. Ms. Sto. Tomas was a member of CHAMPUS, the entity handling the Medicare benefits of U.S. veterans and their families. He said that Ms. Sto. Tomas discovered that complainants, among other members of a syndicate, received US\$90,000.00 from CHAMPUS after filing fictitious medical claims in the name of Ms. Sto. Tomas and her family.

According to respondent, he agreed to handle the case of Ms. Sto. Tomas and filed the corresponding criminal

cases for estafa through falsification of public documents and perjury, and an administrative case for the revocation of Dr. Boyboy's license. In fact, complainants tried to persuade Ms. Sto. Tomas to withdraw the cases against them but in vain. As Ms. Sto. Tomas showed no sign of softening her stance against complainants, the latter started filing cases against her to force her to withdraw the cases she had filed, and against respondent to force him to withdraw as counsel for Ms. Sto. Tomas.

The Court referred this case to the IBP for its Committee on Bar Discipline to investigate which thereafter submitted its Report and Recommendation, which was adopted by the IBP, for respondent's suspension from the practice of law for three (3) months.

After thoroughly going over the records, we feel very uncomfortable with the recommendation of the Committee on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP). The CBD-IBP may have arrived at its conclusion on the basis alone of affidavits and pleadings without any testimonial evidence, contrary to established procedure, despite the fact that the charges of blackmail and extortion are factual matters which must be established and proved with sufficient competent evidence.

We must emphasize that a mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt. There must always be sufficient evidence to support the charge. This brings to the fore the application of the age-old but familiar rule that he who alleges must prove his allegations. In the case before us, it is enough for respondent to deny complicity in the alleged blackmail or extortion, without more, for he is not under obligation to prove his negative averment, much less to disprove what has not been proved by complainants. Thus, we have consistently held that if the complainant/plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent/defendant is under no obligation to prove his exception or defense.

The records are barren of any evidence that would prove respondent's culpability. Other than complainants' naked assertion that respondent demanded P300,000.00 from them which was later allegedly increased to P400,000.00, in exchange for the dropping of the charges against them for estafa, no other proof was presented to back up the accusation. Precisely, the absence of any evidence of blackmail and extortion prompted the CBD-IBP to resolve the case against respondent solely on the self-serving declarations of the parties set forth in their pleadings. Thus the Report and Recommendation states -

After a painstaking scrutiny and careful evaluation of the statements and counter-statements made by the parties in their respective pleadings, the undersigned finds that complainants were able to sufficiently establish their charge by a clear preponderance of evidence (*italics supplied*).

The records lay bare the following documents of complainants: (a) Annex "A" of the Complaint, which is the cellular phone number of Atty. Cris Balancio, NBI Director, Region III; (b) Annex "B" of the Complaint, Complaint-Affidavit of Dr. Lydia Boyboy; (c) Annex "C" of the Complaint, Salaysay of Wilfredo Boyboy; (d) Annex "D" of the Complaint, a newspaper clipping stating that complainant Dr. Lydia Boyboy was charged with estafa thru falsification of public documents; (e) Annex "E" of the Complaint, letter of the Chief Attorney of the Professional Regulations Commission (PRC) requiring Dr. Boyboy to submit a counter-affidavit in connection with a complaint filed against her for unprofessional and/or dishonest conduct; (f) Annex "A" of the Reply, complainants' Motion to Dismiss the charge for perjury filed with the City Prosecutor of Manila; (g) Annexes "A-1" and "A-2" of the Reply, Counter-Affidavits of spouses Wilfredo and Lydia Boyboy; (h) Annex "A-3" of the Reply, Subpoena to Wilfredo Boyboy issued by the City Prosecutor of Manila in connection with a perjury case; and, (i) Annexes "B" - "B-4," inclusive, of the Reply, Complaint-Affidavit and Reply-Affidavit of Wilfredo Boyboy.

It is all too obvious from the foregoing that there is a dearth of evidence which would in any way prove the commission of blackmail and extortion, much less incriminate respondent for those offenses. Even the baseless postulations in the affidavits would certainly not carry the day for complainants in view of their lack of evidentiary value. It is not difficult to manufacture charges in the affidavits, hence it is imperative that their truthfulness and veracity be tested in the crucible of thorough examination. The hornbook doctrine is that unless the affiants themselves take the witness stand to affirm the averments in their affidavits, those affidavits must be excluded from the proceedings for being inadmissible and hearsay,[2] as in this case.

The standard of substantial evidence required in administrative proceedings is more than a mere scintilla.[3] It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. While rules of evidence prevailing in courts of law and equity shall not be controlling, the obvious purpose being to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order, this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without basis in evidence having rational probative force.[4]

Lamentably, the evidence against respondent does not meet the mandated standard. At best, complainants would indulge in presumptions which, unfortunately, cannot be a valid basis to slap respondent with administrative sanctions.

It is relevant to note at this point that on 16 October 2000 the Assistant City Prosecutor of Angeles City dismissed for lack of probable cause the criminal case against respondent Atty. Victoriano Yabut, Jr., for violation of Art. 282 of The Revised Penal Code, in connection with the alleged blackmail and extortion filed by complainants against respondent.[5] Relevant excerpts of the Assistant City Prosecutor's findings follow –

As regards the accusation against Atty. Yabut, the same would necessarily fail on the basis alone of the allegation that he made the demand for money right there in his law office x x x. Nevertheless, even assuming “en arguendo” that this case against Atty. Yabut is given due course, the result would still be the same. The existence of a very strong motive on the part of Wilfredo Boyboy or his wife Dr. Boyboy to get back at him for exposing them in their “modus operandi” victimizing CHAMPUS beneficiaries, whether true or not, relegate their accusation to a mere made-up story or possibly a concoction designed to silence Atty. Yabut. Doubtful of its commission, as it is, the doubt should always favor the one accused. In addition, proof of this instant charge is uncorroborated except the lone statement of Wilfredo Boyboy. There must be positive proof of a clear and convincing evidence against Atty. Yabut considering that the charge is a very serious accusation with far reaching implications x x x. Therefore, considering that x x x the evidence are not enough to indict the respondents of the charge, this Investigation opines for the outright dismissal of this case for lack of a prima facie case.[6]

Thus, we are perplexed: If complainants could not even hurdle the low quantum and quality of proof needed to sustain a finding of probable cause, how could the CBD-IBP conclude with definiteness that complainants' evidence has crossed the much more rigid threshold of substantial evidence?

Concededly, respondent's defense of denial is inherently weak. But where denial is set up as a defense, courts should not at once look upon it with wary eyes for there are occasions where it could actually be the real and untarnished truth. Indeed, what other kind of evidence must be adduced by respondent, who is asserting the non-occurrence of extortion or blackmail, if not denial?

Quite surprisingly, the very plain terms of the Report and Recommendation would show in effect that the CBD-IBP erroneously passed upon the credibility of witnesses -

In the first place, complainants have averred in chronological order and in a detailed manner the events

involved in the charge. There is hardly any reason to doubt their asseverations as they contained details that only an insider or one privy to the transaction would have known.

Secondly, the undersigned had laboriously searched for any improper motive on the part of the complainants that drove them to file the instant suit but found none. The record, however, shows that complainants and respondent had no previous acquaintance and did not know each other since Adam. It was only when Ms. Sto. Tomas was referred to respondent that the latter came to know for the first time about the complainants x x x. Such being the case, it would, therefore, be utterly unthinkable and taxing to the imagination to consider the instant case as a harassment suit. Hence, it is safe to conclude that complainants have been genuinely moved by a serious quest for justice for the wrongful and illicit conduct as shown by respondent (emphasis supplied).

The words now written in italics in the first and second paragraphs above quoted for emphasis are but puerile dialectics and conclusions devoid of evidentiary support. It is significant that in its Order of 21 August 2001, the CBD-IBP dispensed with a full-dress hearing, i.e., the presentation of testimonial evidence, purportedly to expedite the proceedings. Instead, it required the parties to simply file their respective memoranda and thereafter submit the case for resolution on the basis of the pleadings.[7] Thus, there was obviously nothing upon which an assessment on credibility of witnesses may be predicated, since the CBD-IBP never had the opportunity of hearing the witnesses, or observing their deportment and manner of testifying.

The oftentimes thin but clear line between fact and prevarication is not always discernible from a mere reading of the cold pages of the records. Certainly, only a judge who had personally heard the witnesses and observed their demeanor on the stand can arrive at an informed and intelligent judgment on whom to believe and whom not to believe.

There can be no quarrel that the act of the CBD-IBP in dispensing with the hearing is fairly within the bounds of permissible legal procedure; for after all, as observed in the ponencia, “a trial-type hearing is not always de rigueur in administrative proceedings.” But we emphasize that since the CBD-IBP inexorably anchored its Report and Recommendation on complainants’ credibility, a trial-type hearing becomes an indispensable requirement in this case.

It must be stressed that the CBD-IBP is tasked to look into and investigate beyond the serious allegations of wrongdoing purportedly committed by a member of the Bar, and thereafter recommend the imposition of the proper administrative penalty upon the culpable party, when warranted by the evidence. Failure of respondent to appear at the scheduled hearings despite notices did not relieve the CBD-IBP of the duty to diligently inquire into the factual assertions of complainants in their pleadings and affidavits. Ordinary prudence dictates that it should have proceeded with the hearings and accordingly received ex parte the testimonial evidence of complainants. If respondent failed to appear once or twice because he was abroad “to have a thorough medical check-up and the long awaited relaxation from hectic schedules,” he should have been warned that if he should not appear again the evidence of the complainants would be received ex parte and he may be considered to have waived his right to appear and present his evidence thereafter. But no such warning appears to have been made before this case was eventually decided on the merits.

Considering the dismal state of complainants’ “evidence,” we cannot rule out the possibility that, as asserted by respondent, the instant disbarment case was ill-motivated being retaliatory in nature and aimed at striking back at him for having filed the criminal case for estafa and an administrative case for grave misconduct, dishonesty and malpractice against Dr. Lydia Boyboy. Verily, respondent’s fears of being “stricken back” may just as well be viewed as good and equally plausible as the blackmail and extortion alleged by complainants but which have not been established with an iota of evidence or any degree of certitude.

We can only echo in principle our admonition in *Castaños v. Escaño, Jr.*,[8] which although involving a bribery

charge against a judge, may nevertheless apply by analogy in the present recourse:

An accusation of bribery is easy to concoct and difficult to disprove. Thus, to our mind, the complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the bench, the quantum of proof required should be more than substantial. We have held in the case of *Lopez v. Fernandez* that:

“Numerous administrative charges against erring judges have come to this Court and We viewed them with utmost care, because proceedings of this character, according to *In Re Horrilleno*, as set forth in the opinion of Justice Malcolm, are in their nature, highly penal in character and are to be governed by the rules applicable to criminal cases. The charges must therefore, be proved beyond a reasonable doubt. This 1992 decision has been subsequently adhered to in a number of cases decided by this Court.”

x x x In order that the allegation of a charge of this nature may not be considered a fairy tale, evidence other than the doubtful and questionable verbal testimony of a lone witness should be adduced. Entrapment should have been pursued. Evidence of a reasonable report to police authorities should have been presented. Record of where the bribe money came from, its specific denominations and the manner respondent accepted and disposed of it should have been clearly shown (*italics supplied for emphasis*).

So must it be in the instant case. An accusation for blackmail and extortion is a very serious one which, if properly substantiated, would entail not only respondent's disbarment from the practice of law, but also a possible criminal prosecution. To be sure, it will take more than mere pleadings and unreliable affidavits to lend an aura of respectability and credibility to complainants' accusations. A finding of guilt should only come from the strength of complainants' evidence, not from the weakness of respondent's defense.

In this connection, the sad reality in cases of this nature is that no witness can be called to testify on the attempts at extortion since no third party is ordinarily involved to witness the same. What independent evidence can there be in a situation like this, when the only persons present are the ones who made the demand and on whom the demand was made?

We need not search far and wide for answers, for it was already given in the *aforecited* case of *Castañon v. Escaño, Jr.* Entrapment has been a tried and tested method of trapping and capturing felons in the act of committing clandestine crimes, such as sale and distribution of prohibited drugs, blackmail, extortion and bribery. It can provide hard-to-dispute real evidence of culpability in the form of the marked money. Had complainants pursued the alleged planned entrapment of respondent, their case could have assumed an entirely different complexion.

Complainants' explanation that they failed to entrap respondent “for lack of funds,” is too lame and flimsy an excuse. It was not necessary for them to raise the whole amount allegedly demanded by respondent to set up an entrapment, for a few genuine bills stuffed with blank papers cut to resemble money bills would have been sufficient for the purpose. Law enforcement authorities have employed this standard technique in cases where the amount demanded by the person to be apprehended is too substantial. Undoubtedly, Director Balancio of the NBI, who purportedly suggested the entrapment of respondent, should be conversant with such technique but, unfortunately, no explanation was given for not applying the accepted standard procedure except allegedly “for lack of funds.” This, we say, is incredible!

Even more strange is the fact that Director Balancio was not even presented to testify in behalf of complainants to prove at least that the supposed “blackmail” or “extortion” was reported to him, and that complainants indeed sought his help relative thereto.

Looking at the present instance with an absolutely objective eye, we are not disposed to accept as gospel truth complainants' imputation of criminal or administrative wrongdoing to respondent in view of the existence of a wide chasm between the accusations and proof. The accusations should be fittingly treated for what they are - mere accusations founded on speculation and conjecture, if not sheer temerity. For these reasons, we are unable to yield assent to the Report and Recommendation of the CBD-IBP, otherwise the decision that would be handed down would unlock Pandora's box of abuse. Perhaps we may not realize it, but lawyers would be at the mercy of the shrewd, the sinister, and the disgruntled who could very easily vent their rancor against members of the Bar through the mere expedient of hurling unsubstantiated - worse, even malicious and prevaricated - claims. Surely, all lawyers may fall victims of this vicious scheme.

WHEREFORE, the instant administrative complaint for disbarment against respondent ATTY. VICTORIANO R. YABUT, JR., is DISMISSED.

SO ORDERED.

Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Art. 282 punishes the crime of Grave Threats. Blackmailing and extortion are punished under Art. 283 on Light Threats. See Reyes, *The Revised Penal Code*, 1993 ed., p. 559.

[2] See *People v. Quidato*, G.R. No. 117401, 1 October 1998, 297 SCRA 1, 8.

[3] *Ang Tibay v. The Court of Industrial Relations*, 69 Phil. 635 (1940).

[4] See Preceding Note.

[5] Docketed as I.S. No. 00-0592, *Wilfredo Boyboy and Dr. Lydia Boyboy v. Atty. Victoriano Yabut, Jr. and Arlene Sto. Tomas*.

[6] Annex "B." IBP Records, Vol III, p. 11-13.

[7] See IBP Records, Vol. III, p. 54.

[8] Adm. Matter No. RTJ-93-955, 251 SCRA 174, 184-185, 191.

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