

ATTY. JOSE F.S. BENGZON, JR., COMPLAINANT, VS. AGAPITO RAMOS, DEPUTY SHERIFF, OFFICE OF THE PROVINCIAL SHERIFF, PASIG, RIZAL, RESPONDENT.

A.M. No. P-160. May 31, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court finds that the charges of gross neglect of duty and unauthorized use of an attached car in his official custody against respondent deputy sheriff have been duly substantiated and in a spirit of leniency considering his twenty-seven years of government service imposes upon him the penalty of three (3) months' suspension without pay with warning.

The uncontroverted facts are set forth in the report of investigating Judge Buenaventura J. Guerrero of the Rizal court of first instance on the complaint lodged by complainant against respondent deputy sheriff of the office of the provincial sheriff of Rizal as follows:

"Uncontroverted are the following facts: On March 17, 1973, in Civil Case No. 7877 of the Court of First Instance of Davao (Branch II), a writ of preliminary attachment was issued in favor of Gustavo Suarez against Benito Dominguez, Jr. (p. 6 rec.). As special sheriff, respondent Agapito Ramos implemented the aforesaid attachment order and on April 23, 1973 attached Mr. Dominguez' Impala car bearing Plate No. 83-62. On the same date, as well as on April 24, 1973, while the car was under attachment, it was parked several times, i.e., at 1:16 p.m. April 24, 1973; at 5:21 p.m., April 23, 1973; at 11:16 a.m. April 24, 1973 (p. 10, rec.), at Rizal Parking Lot. The Court of First Instance of Davao (Branch II) per order dated April 24, 1973, lifted and set aside the writ of attachment (p. 7, rec.). On April 30, 1973, complainant personally delivered said order to respondent Ramos who received it in the presence of the Provincial Sheriff of Rizal (p. 7, rec.). Acting on the order lifting the preliminary attachment, respondent Ramos released the Impala car on the same day (p. 23, rec.). On July 6, 1973, the notices for the lifting of attachment in Civil Case No. 7877 were sent by ordinary mail to the Philippine National Bank, Escolta, Manila; Integrated Construction Service, Manila; Metropolitan Water and Sewerage System, Manila; PCI Bank, Luneta, Manila; and Prudential Bank & Trust Co., Manila (p. 52, rec., Exh. 6).

"Anent issue No. 1, aforesated, the notices to lift garnishment were sent by ordinary mail to only four (4) of the eight (8) institutions served with notice of garnishment. Despite the fact that these notices were dated May 10, 1973, they were only mailed on July 6, 1973, on the day they were received by the mailing clerk. As early as April 30, 1973, respondent Ramos had already received the order lifting the preliminary attachment, yet, it took him more than a week or on May 10, 1973 to make the notices lifting the attachment, and it took him nearly two (2) months thereafter to turn over these notices to the mailing clerk of his office. These delays cannot be considered much less accepted as reasonable and unavoidable on account of the volume of respondent's work. There has been a clear neglect of duty on the part of respondent Ramos on this particular issue.

"Coming now to issue No. 2. – Respondent does not deny that the car in question was parked at Rizal Parking

Lot on the dates in question. He explained, however, that he placed the car in the custody of a co-employee and it was the latter who used the vehicle. Respondent cannot be excused for the unwarranted use of the vehicle by his agent. While it may be conceded that property under custodia legis must be maintained for their preservation, respondent's argument that the utilizations of the vehicle on the dates aforementioned were intended for that purpose, is not well-taken. If the intention was only for the up-keep of the car, this could have been done by running the engine with the vehicle remaining stationary.

"Respondent has been in the service for about 27 years and this is his initial administrative case. This circumstance appears to be the only mitigation in his favor." [1]

A review of the record shows the above findings to be duly substantiated. More, in his answer of August 24, 1973 to the second charge, respondent did admit that "(R)egarding the second complaint – that I used the Chevrolet Car in question – wish to state that I did in fact use the car while it was, in my possession maybe more particularly on April 23 and 24, 1973 as alleged by Atty. Bengzon. Even as I used the car in question I did it not for my personal benefit and aggrandizement but rather for the benefit of Atty. Bengzon's client. As a Special Sheriff, I am responsible not only for the safekeeping of the car but also to maintain it in the same good running condition that it was at the time it was attached barring only the ordinary wear and tear of the car," [2] while at the investigation, he reneged on his admission and claimed that he placed the car in the custody of a co-employee (Bernardo San Juan) [3] who was the one who used the vehicle on the days it was found parked at the Rizal Park parking lot. Needless to say, such unauthorized use of vehicles and personal properties in the official custody of sheriffs cannot be sanctioned or tolerated and borders on misappropriation of property.

Furthermore, on his claim that this case "is his first administrative case," in his 27th year in service, [4] the Court's available records show that he had been the respondent in another administrative complaint at the instance of complainant Francisco Sycip, although as per this Court's resolution of January 31, 1974, the complaint against him had been "dismissed upon his motion, with the conformity of the complainant." [5] Since the complaint against him had been dropped, the Court has chosen to give him the benefit of the doubt for such imprecision of expression.

The Court has further noted in addition to the findings of the investigating judge that while the notice of garnishment intended for twelve entities was personally served by respondent in two days – ten on March 23, 1973 and two on March 28, 1973 – he did not exert the same effort and diligence in preparing and serving the notices of lifting of the garnishment and took more than two months to deliver the notices on July 6, 1973 to the mailing clerk who mailed them on the same day, on the excuse that this was their procedure of serving such notices of lifting only thru the mails, completely oblivious of the damage and prejudice caused to the parties concerned by such foot-dragging and inefficiency.

In view of the lack of any derogatory record in respondent's long service of about 27 years, the Court is inclined to view respondent's grave transgressions in a spirit of leniency pursuant to the investigating judge's recommendation.

ACCORDINGLY, respondent is hereby ordered SUSPENDED for three (3) months without pay and warned that a repetition of the same or similar acts in the future will merit severe disciplinary action.

SO ORDERED.

Makalintal, C.J., Castro, Makasiar, Esguerra, and Munoz Palma, JJ., concur.

[1] Emphasis supplied.

[2] Record, p. 19.

[3] T.s.n., p. 20, Record, p. 66.

[4] T.s.n., pp. 24-25, Record, pp. 69-70.

[5] Adm. Matter No. P-158, entitled "Francisco Sycip vs. Nicanor Salaysay, etc., et al."

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