

**VICENTE MUÑOZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND THE COURT OF APPEALS, RESPONDENTS, DELIA T. SUTTON,
RESPONDENT.***G.R. No. L-33672. September 26, 1973*

Ponente: FERNANDO, J.

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We have before us a task far from pleasant. Respondent, Delia T. Sutton, a member of the Philippine bar, connected with the law firm of Salonga, Ordoñez, Yap, Parlade, and Associates, must be held accountable for failure to live up to that exacting standard expected of counsel, more specifically with reference to a duty owing this Tribunal. She failed to meet the test of candor and honesty required of pleaders when, in a petition for certiorari prepared by her to review a Court of Appeals decision, she attributed to it a finding of facts in reckless disregard, to say the least, of what in truth was its version as to what transpired. When given an opportunity to make proper amends, both in her appearance before us and thereafter in her memorandum, there was lacking any showing of regret for a misconduct so obvious and so inexcusable. Such an attitude of intransigence hardly commends itself. Her liability is clear. Only her relative inexperience in the ways of the law did save her from a penalty graver than severe censure. So we rule.

The background of the incident before us was set forth in our resolution of July 12, 1971. It reads as follows: "Acting upon the petition for review in G.R. No. L-33672, Vicente Muñoz v. People of the Philippines and the Court of Appeals, and considering that the main issue therein is whether petitioner Muñoz is guilty of homicide through reckless negligence, as charged in the information; that— in the language of the decision of the Court of Appeals — 'the prosecution and the defense offered two conflicting versions of the incident that gave rise to the case'; that, upon examination of the evidence, the Court of Appeals found, as did the trial court, that the version of the prosecution is the true one and that of the defense is unbelievable; that this finding of the Court of Appeals is borne out by substantial evidence, whereas the version of the defense is inconsistent with some established facts, for: (a) petitioner's theory, to the effect that his boat had been rammed by that of the complainant, is refuted by the fact that after hitting the left frontal outrigger of the latter's boat, the prow and front outrigger of petitioner's motorboat hit also the left front portion of complainant's boat—where the complainant was seated, thereby hitting him on the back and inflicting the injury that caused his death— so that, immediately after the collision — part of petitioner's boat was on top of that of the complainant; (b) these circumstances, likewise, indicate the considerable speed at which petitioner's motorboat was cruising; (c) petitioner's motorboat had suffered very little damage, which would have been considerable had it been rammed by the offended party's boat, the latter being bigger than, as well as provided with an engine twice as powerful as, that of the petitioner; and (d) although appellant's boat carried several passengers, including children, and was, in fact, overloaded, appellant acted as pilot and, at the same time, as its machinist, thereby rendering it difficult for him to maneuver it properly; the Court resolved to [deny] the petition upon the ground that it is mainly factual and for lack of merit. Considering further, that the petition quotes, on page 5 thereof, a portion of the decision appealed from, summing up the evidence for the

defense, and makes reference thereto as 'findings' of the Court of Appeals, which is not true; that, on page 6 of the petition, petitioner states, referring to a portion of the same quotation, that the same 'are the established and uncontroverted facts recognized by the Court of Appeals,' which is, likewise, untrue; that, on page 8 of the petition, it is averred —'It being conceded that the two versions recounted above are by themselves credible, although they are conflicting, the same cannot be binding on, and is therefore, reviewable by the Honorable Supreme Court. Where the findings of fact of the Court of Appeals [are conflicting], the same [are not binding] on the Supreme Court. (Cesica v. Villaseca, G. R. No. L-9590, April 30, 1957)' although, in fact, no conflicting findings of fact are made in the decision appealed from; and that, on page 9 of the petition, it is alleged that the Court of Appeals had 'affirmed the minimum penalty of one (1) year and one (1) day imposed by the lower court,' although, in fact, the minimum penalty imposed by the trial court was 'four (4) months of arresto mayor'; the Court resolved to require counsel for the petitioner to show cause, within ten (10) days from notice, why they should not be dealt with for contempt of court [or] otherwise subjected to disciplinary action for making the aforementioned misrepresentations." [1]

A pleading entitled "Compliance with Resolution" by the aforesaid law firm was filed on August 14, 1971. There was no attempt at justification, because in law there is none, but it did offer what was hoped to be a satisfactory explanation. If so, such optimism was misplaced. It betrayed on its face more than just a hint of lack of candor, of minimizing the effects of grave inaccuracies in the attribution to the Court of Appeals of certain alleged facts not so considered as such. It was then to say the least a far from meticulous appraisal of the matter in issue. Much of what was therein contained did not ring true.

Under the circumstances, we set the matter for hearing on September 14 of the same year, requiring all lawyers-partners in said firm to be present. At such a hearing, respondent Delia T. Sutton appeared. While her demeanor was respectful, it was obvious that she was far from contrite. On the contrary, the impression she gave the Court was that what was done by her was hardly deserving of any reproach. Even when subjected to intensive questioning by several members of the Court, she was not to be budged from such an untenable position. It was as if she was serenely unconcerned, oblivious of the unfavorable reaction to which her evasive answers gave rise. There certainly was lack of awareness of the serious character of her misdeed. The act of unruffled assurance under the circumstances was hard to understand. Perhaps realizing that the Court was not disposed to look at the matter as a minor peccadillo, Attorney Sedfrey A. Ordoñez of the law firm expressly acknowledged that what appeared in its petition for certiorari prepared by respondent Delia T. Sutton insofar as it did misrepresent what is set forth in the Court of Appeals decision sought to be reviewed was reprehensible, and did make with the proper spirit of humility the necessary expression of regret.

What is more, the law firm in a pleading entitled "Joint Apology to the Supreme Court" filed on December 1, 1971, signed jointly by Sedfrey A. Ordoñez and Delia Sutton, did seek to make amends thus: "1. That undersigned attorney, Delia T. Sutton, together with Messrs. Sedfrey A. Ordoñez, Pedro L. Yap and Custodio O. Parlade, partners in the firm of Salonga, Ordoñez, Yap, Parlade & Associates, appeared before this Honorable Court on November 22, 1971, pursuant to an order dated October 18, 1971; 2. That with all the sincerity and candor at the command of undersigned attorney, the circumstances surrounding her preparation of the pleading which gave rise to the instant citation to show cause why she should not be punished for contempt of court were explained by her, with the assistance of Atty. Sedfrey A. Ordoñez; 3. That the undersigned Delia T. Sutton had no intention to misrepresent any question of fact before this Honorable Court for her personal gain or benefit, and that it was her lack of adequate extensive experience in preparing petitions for certiorari which may have caused the inaccurate statements in the said petition which were enumerated in the order of this Honorable Court; 4. That undersigned Delia T. Sutton contritely realizes the errors which she committed in the preparation of the said petition for certiorari and that the same will not recur in the future as she will always abide by the provisions on

candor and fairness in the Canons of Professional Ethics, which reads: '22. [Candor and Fairness]. — The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness. It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely. * * *' 5. That undersigned Atty. Sedfrey A. Ordoñez joins Atty. Delia T. Sutton in expressing his own apologies to the Honorable Court for not having thoroughly supervised the preparation by Atty. Delia T. Sutton of a type of pleading with which she was not thoroughly familiar." [2]

The "Joint Apology" thus offered did mitigate to some extent the liability of respondent Sutton. Some members of the Court feel, however, that it does not go far enough. While expressing regret and offering apology, there was lacking that frank admission that what was done by her should not be characterized merely as "errors" consisting as they do of "inaccurate statements." If there were a greater sincerity on her part, the offense should have been acknowledged as the submission of deliberate misstatements. There ought to be, for the apology to gain significance, no further attempt at minimizing the enormity of the misdeed. It is then as if there was hardly any retreat from the untenable stand originally taken. The mood, even at this stage, seems to be that she could brazen it out as long as the words indicative of an apology were offered. This Court does not view matters thus. To purge herself of the contempt, she ought to have displayed the proper spirit of contrition and humility. The burden cast on the judiciary would be intolerable if it could not take at face value what is asserted by counsel. The time that will have to be devoted just to the task of verification of allegations submitted could easily be imagined. Even with due recognition then that counsel is expected to display the utmost zeal in defense of a client's cause, it must never be at the expense of deviation from the truth. As set forth in the applicable Canon of Legal Ethics: "Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause." [3] What is more, the obligation to the bench, especially to this Court, for candor and honesty takes precedence. It is by virtue of such considerations that punishment that must fit the offense has to be meted out to respondent Delia T. Sutton.

At the same time, the attitude displayed by one of the senior partners, Attorney Sedfrey A. Ordoñez, both in the appearances before the Court and in the pleadings submitted, must be commended. He has made manifest that his awareness of the role properly incumbent on counsel, especially in his relationship to this Court, is deep-seated. It must be stated, however, that in the future he, as well as the other senior partners, should exercise greater care in the supervision of the attorneys connected with their law firm, perhaps inexperienced as yet but nonetheless called upon to comply with the peremptory tenets of ethical conduct.

WHEREFORE, respondent Delia T. Sutton is severely censured. Let a copy of this resolution be spread on her record.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Antonio, and Esguerra, JJ., concur.

Barredo, J., did not take part.

Makasiar, J., on official leave.

[1] Resolution dated July 12, 1971.

[2] Joint Apology, 1-2.

[3] Canon 15, Canons of Professional Ethics, Appendix I, Malcolm, Legal and Judicial Ethics, 221-222 (1949).

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