

**DR. EDGARDO ALDAY, MERCEDES FAVIS, MARNA VILLAFUERTE,
AND CHRISTOPHER GARCIA, COMPLAINANTS, VS. JUDGE
ESCOLASTICO U. CRUZ, JR., BRANCH 58, REGIONAL TRIAL COURT,
MAKATI CITY, RES...**

A.M. No. RTJ-00-1530 (Formerly OCA IPI No. 99-725-RTJ). March 14, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Complainants seek the dismissal of respondent judge allegedly for threatening them with a gun during a traffic incident.

In their verified complaint,[1] complainants alleged that on May 6, 1999, the van they were riding was about to exit the Cityland Condominium at Pioneer St., Mandaluyong City. When they reached the entrance/exit ramp, respondent arrived in his car and blocked the ramp. As a result, neither vehicle could move. Respondent alighted from his car and went over to the van. He shouted "Putang ina ninyo, anong gusto ninyo mangyari?," while brandishing a gun and pointing it at the occupants of the van.

On June 14, 1999, the OCA required respondent to comment.[2] Respondent admitted that there was a traffic altercation. However, he claimed that it was complainants' van which blocked the ramp. He said that he merely alighted from his car to vent his ire at the inept security guard who did not even help them untangle the traffic snarl. He categorically denied any gun-poking incident.

The complaint was re-docketed as a regular administrative matter and referred to Office of the Court Administrator Consultant, Justice Romulo S. Quimbo, for investigation, report and recommendation.[3]

During the hearing, the parties presented conflicting versions of the incident. These are succinctly summarized by the OCA Consultant, and we present both sides for better appreciation of the facts.

On one hand, complainants testified as follows:

1.

Dr. Edgardo S. Alday, 67 years old, a physician by profession, identified and affirmed the truth of the sworn statement (Exhibit A, Rollo, pp. 5-6) he executed at the Eastern Police District Headquarters on May 7, 1999. Said statement was submitted as part of his direct testimony. In said statement, Dr. Alday declared that on May 6, 1999, and he and several companions were aboard his Mercedes Benz van. As they were leaving the parking area of the Cityland Condominium (Cityland for brevity) at Pioneer St., Mandaluyong City, shortly after noon, a car with Plate No. 16 NCR 58 met them blocking their way out. At this juncture, the security guard motioned to them to back up so that the incoming vehicle could enter. While the van was slowly backing up, the respondent who was driving his car was going forward almost pushing the van and at the same time pointing a gun at them through the car's windshield. Upon respondent's car coming alongside and parallel to the van, respondent stopped his car, alighted and with his gun pointed at the occupants of the van, shouted three times

saying "Putang ina ninyo, anong gusto ninyo mangyari". Examined further by his counsel, Dr. Alday declared that prior to the incident, he did not know the respondent not having ever met him.

On cross-examination by respondent's counsel, Dr. Alday insisted that what he related in his statement was what actually happened. He gave a more detailed description of the happening. Asked to specify the firearm respondent allegedly used to point at them, Dr. Alday insisted that it was black automatic pistol not a chrome-plated revolver which the cross-examiner suggested.

2.

Ms. Marna Villafuerte-Judan, 32 years old, businesswoman, was the second complainant to testify. She identified and affirmed Exhibit "B" (Rollo, pp. 9-10) as the sworn statement she gave at the Eastern Police Headquarters on May 7, 1999. The same was offered as her direct testimony. She declared that shortly after noon on May 6, 1999, she was in a Mercedes Benz van with Dr. Edgardo Alday and his wife, Dr. Mercedes Favis. The said van was being operated by Dr. Alday's driver. As the vehicle was about to leave the parking area of Cityland on Pioneer St., Mandaluyong City, a red car driven by a man in a business suit who they later found out was respondent Judge Escolastico Cruz, blocked their way. The security guard on duty motioned Dr. Alday's driver to back up. As they were backing up, the respondent was advancing and almost pushing the van. She saw Dr. Alday, who was seated in front next to the driver, open his window and inform the respondent, who was inside his car, that we were just going out but the respondent berated (nagmura) Dr. Alday saying that he did not care but he was coming in. When respondent's car came alongside their van, she saw the respondent point his firearm at them. After that the respondent went his way. She saw that respondent's car had Plate No. 16 NCR. Asked additional questions by their counsel, Ms. Judan declared that she had not met respondent before the incident which occurred on May 6, 1999. She only found out his identity at the police station when she learned that Plate No. 16 is issued only to judges.

Answering the undersigned, Ms. Judan stated that she was a resident at Cityland. She admitted that although she is not related to either Dr. Alday or his wife, she is close to them and she addresses them "tito" and "tita".

Cross examined by respondent's counsel, complainant Judan admitted that after she boarded the van next to Dr. Favis, she was engrossed in conversation with her that she did not notice the arrival of respondent's car near the "tali", which she described as the rope slung across the driveway. She first noticed the respondent after he had already crossed the "tali". She said she did not notice respondent alight from his car as she only became aware of the incident when the red car was already in front of her. She stated further that there was an exchange of words between Dr. Alday and respondent and that immediately after they left the area, they had proceeded directly to the police. Although there was a police station nearer Cityland than the one to which they had repaired, it was a spot choice they made at that moment to go to the Eastern Police District Headquarters on Meralco Avenue.

3.

The third and last complainant to testify was Dr. Mercedes A. Favis, 66 years old, also a physician. She identified and affirmed the truth of the sworn statement (Exhibit C, Rollo, pp. 7-8) she executed on May 7, 1999, at the Eastern Police District Headquarters. Answering additional questions posed by their counsel, she stated that she did not know nor had she ever encountered the respondent before May 6, 1999. In Exhibit "C" which was submitted as her direct testimony, Dr. Favis declared that they had gone to the police headquarters to file a complaint against Judge Escolastico Cruz who was identified to them by the security guard. In the same statement she declared that on May 6, 1999, between 12:10 and 12:15 in the afternoon, she, together with her husband, a guest and their driver were engrossing from the parking area of the Cityland, at Pioneer St., Pasig City, aboard their Mercedes Benz van when they were suddenly confronted by a red automobile driven by a man dressed in a dark business suit. The driver of this automobile was repeatedly shouting curses saying "Putang ina ninyong lahat, ano ba ang gusto ninyong mangyari", at the same time pointing a firearm towards the passengers of the van. The driver of the red car alighted and confronted her husband and their driver with a

gun which he pointed at them. After the driver of the red car had finished bad mouthing them, he drove away. They, in turn, left and immediately went to a police station to make a report. Their guest was able to get the plate number of the red car which was 16 NCR 58 which she knew was issued to a judge.

On cross examination, Dr. Favis admitted that Exhibit "C" was made the day after the incident because after they went to report to the police on the day of the incident, the latter accompanied them to the Cityland Condominium and later they had gone to the IBP and it was already late in the afternoon when they returned to the police station. The investigators suggested that they return the next day to have their statements taken. She further testified that while they were backing up, the red car driven by the respondent was jerkily pushing them. She described how respondent was pointing the gun at them in a swaying motion and that the weapon being brandished by the respondent was not a revolver.[4]

On the other hand, respondent did not testify but presented his witnesses who testified as follows:

1.

Atty. Alex Tan identified and affirmed the truth of the statement he executed before Ass't. Provincial Prosecutor Rizalina T. Capco-Umali of Rizal (Exhibit 1, Rollo, pp. 58-59). The same was submitted by respondent as an annex to his comment in this administrative matter. This sworn statement was submitted as his direct testimony. In said statement, Atty. Tan relates that on May 6, 1999, he had invited respondent (his classmate at San Beda College) and his wife to lunch at the Kamayan Restaurant at EDSA. He had gone to respondent's office at Makati City at half past 11:00 o'clock. They proceeded to Cityland in Mandaluyong City with Judge Cruz driving his Honda Civic while he followed aboard his white Corolla. When respondent judge turned right towards the parking lot, he had to stop because his way was blocked by a Mercedes Benz van which was parked in the middle of the driveway. Respondent sounded his horn but the van's driver instead moved forward until the van was only a meter away from the hood of respondent's car. An old man seating beside the driver of the van signaled to respondent to move back but respondent responded that he could not because Atty. Tan's car was right behind his and following Atty. Tan's car was a taxicab. He saw Judge Cruz alight from his car and immediately go to the security guard on duty berating the latter saying, "Ano ba ang ginagawa mo dito, bakit hindi ka mag traffic? Ano ka dito, dekorasyon? Kung hindi mo kayang mag traffic, mag resign ka na".

Atty. Tan continued saying that he saw the security guard approach the driver of the Mercedes Benz van and signaled the latter to move back so respondent was able to proceed to the parking area. He further testified that he "never saw Judge Cruz point a gun to anyone that noon of May 6, 1999, much less alight from his car carrying any handgun." He finally stated that had he seen the respondent point a gun at anyone, he would have been the first to prevent and/or stop him.

During his testimony, Atty. Tan identified another sworn statement (Exhibit 1-C) where he described what happened in the afternoon of June 7, 1999, at the Hall of Justice in Mandaluyong City where he was accosted, threatened and cursed by three people, namely: complainant Dr. Edgardo Alday, a certain Bong Villafuerte and their driver, Christopher Garcia. He speculated that he was mistaken by these three people for the respondent Judge Cruz.

On cross examination, Atty. Tan admitted that he was a classmate of the respondent in the San Beda College of Liberal Arts; that he had known the respondent since 1968; that he was a name partner in the law firm of A. Tan, Zoleta and Associates; that his firm was counsel for the plaintiff in Civil Case No. 98-3064 entitled "SAAG Philippines, Inc. versus Hexagon Realty Corp., et al" which was pending before Branch 58 of the Makati Regional Trial Court presided by the present respondent; that exhibit "D" is a copy of the complaint in said case; that on December 24, 1998, the respondent issued a temporary restraining order (Exhibit E) in the said case as prayed for by them; and that the case was terminated in January 1999.

2.

Respondent's second witness was Aida F. Alba, of age, married and a resident of Cupang, Muntinglupa. She identified and affirmed the truth of the statement (Exhibit 2, Rollo, pp. 64-65) which she jointly executed with Jose Ignacio before Rizalina T. Capco-Umali, Rizal Ass't Provincial Prosecutor. The same statement was among those annexed to respondent's comment in this administrative matter. The same statement was offered as the direct testimony of this witness.

In Exhibit "2", Ms. Alba declared that on May 6, 1999, she had arranged a "tripping" with Anna B. Dianito to see certain units of the Cityland located on Pioneer St., Mandaluyong City. She, together with Jose Ignacio, Anna Dianito and one Jackielyn Sawit, arrived at the said place at past 11:00 o'clock. After making a tour of the condominium, she had seen a man dressed in a coat and tie alight from the red Honda, walk to the security guard and berate him. The guard then approached the Mercedes van and directed its driver to move the van back. After the latter had done so, the Honda was able to continue on its way towards the parking lot. She further stated that during the standstill of the cars, she saw no person holding a gun or pointing the same at anyone. She and her companions were right on the landing pad and had a clear and unobstructed view of the scene.

On cross-examination, she admitted that respondent Judge Cruz contacted Anna Dianito and the latter called her to inform her that she was needed to make an affidavit regarding the incident. She had gone to the office of a lawyer whose name she could not remember where she was interviewed. The lawyer then prepared the statement which she and Jose Ignacio jointly swore to before the investigating prosecutor.

3.

Respondent's third witness was Annaliza L. Dianito, a thirty-year old real estate broker. She identified and affirmed the truth of the statement (Exhibit 4, Rollo, pp. 62-63) which she executed before the Ass't. Provincial Prosecutor investigating the complaint of Dr. Alday.

In the said statement, the witness declared that she is a real estate broker and that she had arranged a "tripping" with some of her clients on May 6, 1999; that she had met with them at the Goldilocks Bake Shop on Shaw Blvd. and they arrived at Cityland on Pioneer Street at 11:10 o'clock in the morning; that she had shown her clients four units in the building and as it was almost noon, she showed them the several eateries and convenience stores among which was Unit UG 16 which is located nearest the stairway leading either to the driveway or the exit towards Pioneer Street; that as they approached the landing pad leading to the stairs, their attention was called by the honking of horns from vehicles; that she saw a red Honda Civic, a white Toyota Corolla and a taxicab in that order; that their way was blocked by a parked Mercedes van; that they saw a man in coat and tie who turned out be respondent Judge Cruz, alight and approach the security guard on duty and directed the latter to ease out the traffic snarl; that the security guard approached the Mercedes van and motioned to its driver to move back; that the red Honda Civic of the judge was finally able to proceed to its parking area; that during all the few minutes of traffic along the driveway, she never saw Judge Cruz or any person for that matter, point a gun at anyone; that it was just an ordinary day-to-day scene along the driveway of the condominium; that at about 12:30 o'clock, she parted ways with Ms. Cawit, Ms. Alba and Mr. Ignacio.

On cross examination, the witness admitted that when she and her companions arrived at the stair landing the four vehicles - a red Honda Civic, a white Toyota Corolla, a taxicab and the Mercedes Benz van were already on the driveway. She further admitted that she did not leave her name or address with anybody after the incident and that she had been interviewed by Atty. Cabangon at an office on Panay Avenue in Quezon City. She had been brought to Atty. Cabangon's office by Atty. Tan. She declared that she had been acquainted with Judge Cruz since 1998 when the latter wanted to buy a 3 bedroom unit; that after the incident of May 6, 1999, Judge Cruz had called her and asked her to go to his place at Cityland; that she had gone to him and found Atty. Tan with him; that because he had seen her at the landing pad on May 6, 1999, Judge Cruz mentioned to her that he remembered having seen her with some companions; that she took it upon herself to notify her three companions - Jose Ignacio, Aida Alba and Jacklyn Cawit - and bring them to the Judge; that after being

interviewed by the Judge, Atty. Tan brought the four of them to Atty. Cabangon upon the request of Judge Cruz and that they were interviewed and their affidavits were made.

4.

Respondent's fourth and last witness in chief was Segundino Ellazo, the security guard on duty at the Cityland on May 6, 1999. He identified his sworn statement (Exhibit 5 and also marked Exhibit G for complainants, Rollo, pp. 33-34), as well as his signature (Exhibit 5-A). In said statement, Ellazo stated that he was, on May 6, 1999, a member of the Airborne Security Service, Inc. and was on duty at the Cityland from 8:00 o'clock in the morning until evening; that at about 12:10 o'clock in the afternoon of May 6, 1999, he saw Judge Cruz, owner of a unit in the Cityland, arrive aboard his car with Plate No. "16 NCR 58"; that respondent judge was unable to immediately proceed to his parking slot because a Mercedes Benz van was blocking the driveway; that the van backed up slowly because there were cars parked on the side; that respondent was forcing his way as the van was backing up; that suddenly he saw respondent judge pull out a gun and point the same through his windshield at the van; that when the vehicles were already parallel to each other, respondent Judge Cruz alighted from his car and told Ellazo to assist in untangling the traffic snarl and respondent immediately boarded his car and proceeded to his parking slot and the van went out. He concluded his statement saying that he was not threatened by Judge Cruz nor did he have any grudge against him.

Mr. Ellazo also identified a second statement dated July 31, 1999 (Exhibit 6) as well as his signature (Exhibit 6-A) thereon. (The statement appears to have been subscribed and sworn to before a Notary Public on July 31, 1999 and resubscribed before the Assistant City Prosecutor on August 2, 1999). Ellazo declared that he had to correct what he had stated in his statement before the police. In Exhibit "6", the witness stated that on May 6, 1999, at about 4:18 o'clock in the afternoon, he had gone to the Eastern Police District Headquarters at Meralco Ave., Pasig City where he executed Exhibit "5" (also marked Exhibit G); that when Judge Cruz alighted from his car, he was not carrying any firearm and that he did not see him point the gun at anyone because if he did, it is not possible he could not have seen it; that immediately after Judge Cruz approached the witness and told him to arrange the traffic, he forthwith boarded his car and proceeded to his parking slot; that at no time did Judge Cruz approach the van when it was in front of his car.

Ellazo executed a third statement (Exhibit 7) which he signed (Exhibit 7-A) and swore to before a Notary Public on September 9, 1999. In the latter statement he declared that on May 6, 1999, he was forced to go to the Eastern Police District at Meralco Ave., Pasig City in order to give a statement which was against his will only because he was threatened by Col. Antonio B. Aguilar, Jr., through the Cityland Administrator that he would be charged with "obstruction of justice" if he did not testify for Dr. Edgardo S. Alday and he was given only up to 4:00 P.M. that day to comply; that because of his fear, as he was informed that the Pasig police were looking for him, he gave a statement which was involuntary because it was made under the fear that he might be arrested, charged and confined; that so everyone may know and for the sake of the truth, he declared that it was not true that Judge Cruz had drawn a gun as he did not have a gun on that day; that his description of the gun being small and black was based only on what Dr. Alday had said; that as a matter of fact, Dr. Alday kept calling and calling the office where he was working in order to convince him to testify against Judge Cruz; that he had sought advice from his family and his relatives and he was advised to come out and tell the truth so that his conscience would not bother him; that because of the pressure of the office where he was working, he had to look for another job and to transfer his residence. Ellazo further declared that on May 6, 1999, at about 12:10 o'clock P.M., when Judge Cruz entered the driveway of the Cityland he was followed by the white car of Atty. Alex Tan; that he did note in his blotter this fact because after Judge Cruz proceeded to the parking area, he did not allow Atty. Tan to follow because the area was already full; that during that time there were many persons present among whom were real estate broker Anna Liza Dianito who was in company with some prospective buyers/tenants; that as a matter of fact, he was embarrassed when he was berated by Judge Cruz in the presence of Atty. Tan and Ms. Dianito.

Continuing his direct testimony, Ellazo was asked to explain the discrepancy between his first statement

(Exhibit 5) and his second and third statements (Exhibits 6 and 7). He declared that on May 6, 1999, he had just relieved the other security guard who had gone to eat when Judge Cruz entered driving his red car and found his way was blocked by a Mercedes Benz van; that Ellazo had signaled the driver of the van to move back but said driver was hardheaded and did not immediately comply; that Judge Cruz and Dr. Alday, the passenger of the van exchanged shouts; that Judge Cruz alighted, approached and berated him (Ellazo); that since he was outside his guard house at the time, he approached the van and assisted its driver to move back so that Judge Cruz was able to proceed to his parking slot; that there were many people at the top of the stairs one of them was Anna Dianito and companions whose names he did not know.

On cross examination Ellazo was confronted with his answers to questions propounded by the police investigator contained in his statement marked Exhibit "5" (also marked Exhibit G). His attention was called to Question No. 5 (Exhibit G-2) in Exhibit "5" where he was asked to describe what had happened and his answer was that he had seen Judge Cruz pointing his gun at the Mercedes Benz van with Plate No. WBF 991. Ellazo stated that he did not give that answer but the same was only put there (gawa gawa lang) by the police.

Ellazo was also asked about the answer he gave to Question No. 15 (Exhibit G-3) in Exhibit "5" where he stated that when Judge Cruz arrived in his car with Plate No. 16 NCR 58 he could not immediately proceed to his parking slot because his way was blocked by a van with Plate No. WBF 991 so that he (Ellazo) signalled the driver of the van to back up; that Judge Cruz immediately followed the van as the latter was backing up and at that moment he saw Judge Cruz pull out a gun which he pointed through his windshield at the van; that when the two vehicles were side by side, Judge Cruz alighted from his vehicle and told him to assist in arranging the flow of the traffic and after that Judge Cruz proceeded to his parking slot. Ellazo explained that part of what was supposed to be his answer was actually his but the rest was just told to him by the police.

Asked by the undersigned to indicate what part of Exhibit "5-B" was his and what was not, Ellazo stated that he never said that Judge Cruz pulled out a gun and pointed it at the Mercedes van (Exhibit 5-B-1) although the rest of the answer was his.

On further cross examination, Ellazo admitted that he had Exhibit "6" made by neighbor who was a lawyer, a certain Atty. Mabuti. The same affidavit was submitted at the preliminary investigation in the Office of the City Prosecutor of Mandaluyong at the instance of Atty. Alex Tan and Judge Cruz. He stated that a few weeks after the happening, he had gone to Judge Cruz to apologize for what he had said in his first statement which was taken by the police. He also told Judge Cruz that he was willing to execute another affidavit in his favor. After that he had voluntarily gone to Atty. Mabuti to have his second affidavit (Exhibit 6) made and after this was made, he was accompanied by Atty. Alex Tan to the prosecutor's office in Mandaluyong to submit Exhibit "6".

The witness further admitted that besides his going to the residence of Judge Cruz to see him, he had seen respondent several times while he was on duty at Cityland; that it was Atty. Tan who picked him up at his house and brought him to Mandaluyong City to submit the second affidavit (Exhibit 6) to the prosecutor handling the preliminary investigation.

Anent his third affidavit (Exhibit 7), Ellazo admitted that he was told by Atty. Tan to go to the office of Atty. Gayos to make the third affidavit in order to clarify certain matters contained in Exhibit "6". He insisted that the respondent had no gun on that date.

Answering questions of the undersigned, Ellazo insisted that Question No. 5 (Exhibit G-2) as well as Question No. 6 (Exhibits 5-B-2 & G-3) were never asked of him and neither did he give the answers found in said exhibits.[5]

On June 19, 2000, respondent formally offered his evidence[6] and rested his case. Thereafter, complainants formally offered their evidence.[7]

However, considering the apparent turnaround of Security Guard Segundino Ellazo, Justice Quimbo allowed complainants to present rebuttal evidence. On June 19, 2000, complainants presented Police Superintendent Antonio V. Aguilar, Jr. and SPO1 Joseph Amuyo, whose testimonies are as follows:

Police Superintendent Antonio V. Aguilar, Jr. declared that on May 6, 1999, he was already the Chief of the District Criminal Investigation Group, Eastern Police District, National Capital Region. He identified the statement (Exhibit 5) which Segundino Ellazo made at the Eastern Police District Headquarters on May 6, 1999. He further said that he had asked Ellazo whether he had executed it voluntarily and of his own free will and whether he swore to its truth. It was only after Ellazo had answered affirmatively to his questions that he administered his oath. He admitted that he had no personal knowledge of the answers given by Ellazo to the investigator, but he insists that he would not have allowed any one of his investigators to manufacture testimony.

SPO1 Joseph Amuyo, after taking oath, declared that on May 6, 1999, he was a police investigator at the Eastern Police District. He was the one who took the sworn statement of Segundino Ellazo on that date. He further declared that the statement given to him at the investigation room of the Eastern Police District was free and voluntary; that he was asking the questions and Ellazo was supplying the answers which he typewrote; that all the answers written on Exhibit "5" were of Ellazo; that as a matter of fact, Ellazo corrected the Plate No. of the van as found in Questions No. 5 and 6; that the answer to Question No. 15 is also Ellazo's.

Cross examined by respondent's counsel, Amuyo declared that Dr. Alday had reported an alleged grave threats against him; that in company with Dr. Alday, SPO2 Emerito Escobido, PO1 Joseph Engero and PO1 Efrén Tejada, he had proceeded to the place where the alleged threats were made; that upon reaching Cityland, they had encountered OIC Dominador Novencio; that he had told Novencio to request Ellazo to report to their office for questioning; that he did not make any threats against Ellazo nor did any member of the PNP; that when Ellazo reported to them, he had taken his statement; that he took the statements of the complainants the next day; that Ellazo gave his statement voluntarily and that it is not true that Ellazo was at first reluctant to testify for as a matter of fact, he had gone to the headquarters with Dr. Alday.[8]

On June 26, 1999, respondent offered the same Security Guard Segundino Ellazo as sur-rebuttal witness, who merely repeated his testimony in chief. After the sur-rebuttal evidence had been submitted, the parties filed their respective memoranda.

On July 19, 2000, Justice Quimbo rendered his report. He found the version of complainants more credible, considering that they had no possible motive to make a false accusation against respondent. He gave credence to the positive testimonies of complainants over the negative testimonies of respondent's witnesses, particularly on whether respondent judge brandished a gun pointed at complainants. Justice Quimbo explained that -

"...True they (Annaliza Dianito and Aida Alba) may not have seen respondent's actual pointing of his gun at the complainants but it is certainly possible that when their attention was called to the incident, it was too late for them to catch the gun poking episode as described by the complainants. Or perhaps they were not at such a vantage point as to be able to see the entire happening. The fact, however, that the three witnesses (Alex Tan, Annaliza Dianito and Aida Alba) did not see the gun toting incident, is not conclusive proof that it did not actually occur." [9]

Justice Quimbo further found Atty. Alex Tan a biased witness, being respondent's classmate at San Beda College, and having represented plaintiffs in a civil case before respondent's sala wherein Tan managed to obtain a TRO on their behalf. He also found the testimony of Security Guard Ellazo unreliable because he recanted his original statement that he saw respondent poke a gun at complainants. Hence, citing cases of gun-poking incidents,[10] Judge Quimbo recommended the dismissal of respondent judge with forfeiture of all benefits due him and with prejudice to reinstatement in any branch of the government or in any government-owned or controlled

corporation.

The crucial issue herein pertains to the assessment of credibility of witnesses. What exactly transpired on May 6, 1999, at the Cityland Condominium, Pioneer St., Mandaluyong City?

Well-settled is the rule that positive testimony prevails over negative testimony. This is particularly true where complainants have no ill-motive in testifying against respondent.[11] Complainants had never met respondent prior to the incident. They had no pending cases before him. Yet they pursued this case with tenacity. They strongly believed they had been unjustly wronged and sought redress therefor.

Brandishing a firearm in public imperils the lives of people. The fact that this was done by a judge outside the courtroom and during a traffic altercation does not justify respondent's gross misconduct. Judicial office circumscribes the personal conduct of a judge. It imposes a number of restrictions thereon. It is but a small sacrifice to pay for accepting and occupying an exalted position in the administration of justice.[12] Irresponsible or improper conduct of a judge, needless to say, erodes public confidence in the judiciary.[13]

In *Marcelino v. Singson*,[14] respondent judge was similarly involved in a traffic accident with the complainant, a fish vendor. While complainant was slowly "backing" his passenger jeepney, respondent's car suddenly crossed his path, resulting in a minor impact. Respondent alighted from the car, approached complainant and boxed him twice on the face. Respondent returned to his car, got a gun, poked it at the face of complainant, and shouted "Hayop Ka!". Respondent then tucked the gun on his waist and delivered another blow on complainant's face. He thereupon left the premises, taking with him complainant's license. Complainant filed criminal cases for Grave Oral Defamation and Damage to Property through Reckless Imprudence against respondent. He also filed an administrative case against respondent. The criminal cases were dismissed when complainant desisted, having apparently patched up things with respondent. Complainant likewise desisted in the administrative case, but the Court nevertheless admonished respondent and ordered him to pay a fine of P1,000.00.

Based on the facts of the present case, we find respondent's acts of confronting complainants and threatening them with a gun during a traffic altercation constitutive of conduct grossly prejudicial to the best interest of the service. Conduct grossly prejudicial to the best interest of the service is a grave offense under Section 46, No. 27, Chapter 6, Subtitle A, Title I of Book V of the Administrative Code of 1987 (E.O. No. 292), Section 23 (t), Rule XIV of the Omnibus Rules Implementing Book V of E.O. No. 292, and Revenue Memorandum Circular No. 49-89, as incorporated in the Personnel Manual of the Supreme Court. The penalty for conduct grossly prejudicial to the best interest of the service is suspension for six (6) months, one (1) day to one (1) year, for the first offense, and the penalty of dismissal for the second offense. This being respondent's first offense for which we find him liable, we deem it proper to impose upon him the penalty of suspension for one (1) year without pay, and a fine of P50,000.00.

The Canons of Judicial Ethics provides that "[t]he assumption of office of judges casts upon the incumbent duties in respect to his personal conduct which concerns his relations to the State and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses and attendants who aid him in the administration of its functions." A judge's personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for he is, as he so aptly is perceived to be, the visible personification of law and of justice.[15]

Finally, it is not amiss to remind members of the judiciary that the Constitution exhorts that "public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives." [16]

WHEREFORE, we hereby find respondent judge GUILTY of conduct grossly prejudicial to the service, and impose upon him the penalty of SUSPENSION without pay for one (1) year and to pay a fine of P50,000.00, to take effect immediately, with a warning that a commission of a similar act shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 1-4. Other complaints pending against herein respondent are A.M. No. RTJ-96-1352 (mauling); and OCA IPI No. 99-830-RTJ (gross ignorance of the law, rendering unjust judgment and gross negligence). Three previous complaints against him were dismissed.

[2] Id. at 14.

[3] Resolution dated January 31, 2000, Rollo, p. 86.

[4] Report, pp. 2-5.

[5] Id. at 5-14.

[6] Exhibits "1" (affidavit of Atty. Alex Tan); "1-A" (his signature on the same); "1-B" (signature of the investigating prosecutor); "1-C" (another statement executed by Atty. Alex Tan); "1-D" (his signature); "2" (joint sworn statement of Jose O. Ignacio and Aida F. Alba); "2-A" (signature of Alba); "3" (sketch drawn by Aida Alba in the course of her testimony); "4" (affidavit of Annaliza B. Dianito), "4-A" (her signature); "5" (Salaysay of Segundino Ellazo dated May 6, 1999); "5-A" (his signature); "5-B" (bracketed portion on page 1); "6" (Sinumpaang Salaysay of Segundino Ellazo dated July 31, 1999 and sworn to before the investigating prosecutor on August 2, 1999); "6-A" (his signature); "7" (a third statement of Segundino Ellazo sworn to before Notary Public Socrates Verayo on September 9, 1999) and "7-A" (his signature).

[7] Exhibits "D" (complaint in Civil Case No. 96-3064) entitled "SAAG vs. Hexagon" pending before respondent's court) and "E" (order of respondent in said case dated December 24, 1998) which were offered to prove the bias of Atty. Alex Tan. Offered likewise was Exhibit "F" (the sketch drawn by Aida Alba); "G" "H" and "I" (the three affidavits of Segundino Ellazo).

[8] Report, pp. 15-16.

[9] Id. at 19.

[10] De la Paz v. Inutan, 64 SCRA 540, 549 (1975); Romero v. Valle, 147 SCRA 197, 203 (1987); Saburnido v. Madrono, 209 SCRA 755, 762 (1992). See also Arban v. Borja, 143 SCRA 634, 642 (1986).

[11] De la Paz v. Inutan, 64 SCRA 540, 545 (1975).

[12] Galang v. Santos, 307 SCRA 582, 589-590 (1999).

[13] Id. at 590.

[14] 243 SCRA 685 (1995).

[15] Marcelino v. Singson, 243 SCRA 685, 688-689 (1995).

[16] Sec. 1, Art. XI, 1987 Constitution.

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