

AQUILINA BITANGCOR, COMPLAINANT, VS. RODOLFO M. TAN, RESPONDENT.*Adm. Case No. 528-SBC. February 25, 1982*

Ponente: MAKASIAR, J.

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These two administrative complaints (petitions) dated February 23 and 28, 1972, respectively (pp. 15-16 and 18-19, rec.) charge Rodolfo M. Tan, a successful 1971 bar examinee, of immorality, with prayers to prevent him from taking his lawyer's oath. As a result of the filing of these cases, the court, on February 29, 1972, resolved to hold in abeyance the respondent's taking of the lawyer's oath together with two [2] others, until he is cleared of the charges against him (p. 21, rec.).

In A.C. No. 528-SBC, the complaint (petition) of Aquilina Bitangcor may be summarized as follows: Sometime in November 1966, she filed a complaint for rape against the respondent in the office of the City Fiscal of Pasay. While the case was being heard therein, respondent wooed complainant Bitangcor, promising to marry her, so that the latter, believing him, did not any more attend subsequent hearings thereon; hence, the rape case was dismissed. Although the respondent did not fulfill his promise of marriage, she continued her relationship with him; but everytime complainant Bitangcor brought up the subject of marriage, he always told to wait for his mother. In June, 1967, complainant Bitangcor confronted respondent about her being pregnant; but the latter denied responsibility, and has since then been avoiding her. A few years after she gave birth to a child named Imelda Bitangcor Tan, complainant Bitangcor sought respondent and reminded him of his promise to marry her and sought support for their child. Respondent refused to marry complainant Bitangcor, but gave their child the minimal amounts of P20, P25 and P50, after which he refused to provide for their child. Complainant then filed a case on behalf of her daughter Imelda, against respondent in the Juvenile and Domestic Relations Court of Manila. Said case, entitled Imelda Bitangcor Tan assisted by her guardian ad-litem, Aquilina Bitangcor versus Rodolfo Tan, was still pending when this case was filed. Bitangcor further alleged that respondent does not deserve to be a lawyer (pp. 15-16, rec.).

In Adm. Case No. 529-SBC, the complaint (petition) of Josefina Peredo alleges the following: On or about August 1971, respondent courted petitioner Peredo, promising to marry her after the bar examinations, and because of such promise, she fell in love with him. Sometime in September 1971, respondent seduced, lured, coerced and employed many tactics on her to satisfy his lust. Because of these acts and in order to avoid any scandal, respondent promised to marry her after the 1971 bar examinations. She accepted the offer of marriage because she was already abused and dishonored. In consideration of such promise of marriage, they lived together as husband and wife from September, 1971 continuously up to January, 1972 in a furnished apartment in Manila, until respondent left for his hometown of Malaybalay, Bukidnon, with-out fulfilling his promise of marriage. The fact of her living with respondent without the benefit of marriage has come to the knowledge of complainant Peredo's family, relatives and friends, causing her embarrassment, unnecessary shame, social humiliation and besmirched reputation. Respondent's continued refusal to marry her makes him undeserving to be a member of the

bar (pp. 18-19, rec.).

Respondent, in his answer dated April 22, 1972 to Bitangcor's complaint admitted that there was indeed a rape case filed against him in the City Fiscal Office of Pasay; but the same was dismissed "for lack of interest of complaining witness" because Bitangcor honestly believed that the case will not prosper since she voluntarily cohabited with him. He denied ever having approached her for any settlement, nor has he ever promised her marriage. He likewise denied paternity of the child Imelda Bitangcor Tan, alleging that the only time he had sexual relations with Bitangcor was on October 23, 1966, and since the child was born on December 26, 1967 or 14 months thereafter he cannot possibly be her father. He also alleged that the petition is unfounded and meant to harass him and to prevent him from exercising his chosen profession (pp. 27-30, rec.).

Respondent's answer dated April 21, 1972 to Peredo's complaint likewise denied the allegations therein, stating that he met Peredo at a birthday celebration in July, 1971 and they became good friends and no more. He never courted Peredo nor were they ever sweethearts. He had never seduced Peredo, as he was then busy preparing for the bar examinations. They never lived together as husband and wife, and respondent had never done any immoral or illegal acts towards complainant Peredo. This case must have been prompted by ill-will, envy, or intention to injure (pp. 32-34, rec.).

On May 15, 1972, the Court referred these two cases to Atty. Victor Sevilla for investigation, hearing, report and recommendation (p. 36, rec.).

Atty. Sevilla set the case for hearing on June 20, 1972 (p. 41, rec.), but the hearing on said date and eight [8] subsequent resettings had to be postponed at the instance of one or both parties. In the scheduled hearing on November 28, 1972, complainant Bitangcor and her counsel failed to appear despite notice; hence, the hearing pro-ceeded only as to complainant Peredo (p. 74, rec.).

On December 21, 1972, complainant Bitangcor filed a motion to withdraw complaint and to dismiss the case (p. 79, rec.) together with an affidavit of desistance (p. 80, rec.) wherein she attests that after filing the case, she realized that she is no longer interested in pursuing the same as she believes that the respondent should be a member of the Philip-pine Bar. Upon receipt of the preliminary report of the Investigator about this development (pp. 82-85, rec.), the Court directed the latter to investigate the veracity of Bitangcor's motion to withdraw (p. 87, rec.). For this purpose, a hearing was set on January 31, 1972, wherein Bitangcor affirmed her motion to withdraw because of a settlement ("nakipag-areglo" - p. 92, rec.). She produced a duplicate copy of a unilateral agreement dated December 20, 1972 and signed by her showing that for and in consideration of the sum of P6,000.00 representing litigation expenses to be reimbursed to her by Rodolfo Tan, of which she acknowledged to have received the sum of P1,500.00 and the balance payable in four [4] installments, she has agreed to cause the dismissal of Civil Case No. E-01199 entitled Imelda Bitangcor Tan, etc. vs. Rodolfo Tan in the Juvenile and Domestic Relations Court of Manila and not to reinstate the same, and that because of the settlement of said case, she is no longer interested in prosecuting the administrative case numbered 528-SBC she filed in this Court as she believes the respondent should be allowed to take his oath as a lawyer (p. 90, rec.).

Henceforth, the hearing of this case proceeded only as to complainant Peredo. Upon conclusion of the investigation, the investigating officer, Atty. Sevilla, submitted his report dated December 28, 1973 (pp. 177-190, rec.) with the following recommendation:

"It is believed that the respondent had committed the acts complained of, namely, that he had lured, seduced, and coerced the complainant and eventually satisfied his lust, with a breach of promise to marry. He is, therefore, not of good moral standing and not worthy to become a member of the Philippine Bar." (P. 190, rec.).

Before finally resolving these cases, the Court En Banc set the case for hearing, requiring all parties to appear personally at said hearing (p. 191, rec.).

A.C. No. 528-SBC

The only evidence in the records to support this claim is the birth certificate (p. 211, rec.) of the minor Emelda Tan [sic] stating that she was born on December 26, 1967 as daughter of Rodolfo Tan and Aquilina Bitangcor. Said birth certificate was submitted in compliance with the order of this Court on March 28, 1974 (p. 210, rec.), after the complaint had already been withdrawn.

The withdrawal of Bitangcor's complaint did not ipso facto result in the dismissal of this case. This Court has always adhered to the time-honored principle that the complainant's loss of interest does not warrant the dismissal of an administrative case (*Pulido vs. Pablo*, A.M. 1888-CFI, Oct. 30, 1981; *Beduya vs. Alpuerto*, 96 SCRA 673, 675 [1980]; *Bais vs. Tugaoen*, 89 SCRA 101, 109 [1979]; *Vasquez vs. Malvar*, 85 SCRA 10, 26 [1978]).

The records disclose that the respondent had admitted having cohabited with Bitangcor (par. 3, Respondent's Answer, p. 27, rec.), although he denies paternity of the child Imelda Bitangcor Tan on the ground that their carnal relation took place in October, 1966 whereas the birth of the minor occurred on December 26, 1967.

Years later, in a pleading entitled Chronological Summary of these two administrative cases (p. 226, rec.), filed in this Court on October 15, 1981 as a reminder that said cases are still pending, the respondent stated the following:

"BACKGROUND:

"That in the year 1965 when respondent was only 22 years old and before he took the Law course, respondent and complainant Bitang-cor became special friends and sweethearts. They went on dates to the movies, parks and eating places.

"That in the month of October, 1966, respondent and complainant Aquilina Bitangcor went out for lunch and to a MOTEL at Pasay City.

"That one month thereafter, Patrolman Mendoza of the Manila Police Department who was also the securityman (bouncer) of the Restaurant where Complainant worked came to my boarding house and invited me to come with him but instead brought me to the Police Headquarters of Pasay City and charged me for RAPE. The rape case was docketed as I.S. No. 51458 in the Fiscal's Office of Pasay City. After several hearings by the assigned Fiscal and in view of Complainant's failure to attend subsequent hearings, the RAPE CASE was dismissed by the Fiscal on September 22, 1967.

"That on January 4, 1971, Complainant Aquilina Bitangcor again filed a case against respondent in the JUVENILE AND DOMESTIC RELATIONS COURT OF MANILA for Support with Alimony pendente lite and Recognition of an illegitimate child and docketed as E-01199, alleging among others that respondent was the alleged father of her child.

"Respondent filed his answer denying the alleged charges on the simple reason that he can not be the father of the child because the period of the child's conception from October, 1966 (the alleged sexual act, which was the basis of the RAPE COMPLAINT -- I.S. No. 51458 in the Fiscal's Office of Pasay City) to that of the actual birth of the child on December 26, 1967, was more than THIRTEEN (13) MONTHS.

"The Juvenile and Domestic Relations Court of Manila dismissed the case.

"That again, when respondent passed the 1971 BAR Exams, Complainant filed the instant Administrative Case No. 528-SBC, repeating the allegations in the RAPE CASE and that of the Juvenile and Domestic Relations Court of Manila.

"That in order to buy peace, and not to be molested any further, respondent paid Complainant the sum of SIX THOUSAND (P6,000.00) PESOS and for this reason, Complainant Aquilina Bitangcor with the assistance of her Lawyer executed an Affidavit of Desistance and the corresponding Motion to Dismiss the case, which was filed with the Honorable Supreme Court and made part of the record of the case" (Italics supplied).

It is obvious from the foregoing pleading which was prepared by respondent himself, that he and Bitangcor were sweethearts from 1965 to 1966 at which time he was about 22 to 23 years old. They used to go out together to the movies, parks and eating places, and had sex in a motel in October, 1966. A rape case was filed one month thereafter in the City Fiscal's Office in Pasay, which case was dismissed as a result of complainant Bitangcor's failure to attend subsequent hearings.

Considering that they had been sweethearts before, it is not difficult to believe complainant Bitangcor's allegation that her non-appearance at the hearing of said rape case was due to the respondent's having wooed her with a promise of marriage. And because of such promise of marriage their physical intimacy -- which was started in October, 1966 -- was resumed, as respondent himself admitted in his answer that "she voluntarily cohabited with him." Cohabitation implies living together and having repeated sex. Bitangcor alleged in his complaint that, because of his promise of marriage, she did not appear anymore at the hearing of the rape case before the Fiscal, who dismissed it as a consequence.

There is no evidence in the record nor any allegation in any of the pleadings filed by respondent that Bitangcor is a woman of loose morals. On the other hand, We note that the birth certificate of Emelda Tan, whose birth was registered on January 4, 1968 or within nine (9) days from her birth on December 26, 1967, carries the name of Rodolfo Tan as the father and Aquilina Bitangcor as the mother (p. 211, rec.). Such birth certificate, certified and signed by Samson N. Guran, Assistant Local Civil Registrar of Bulan, Sorsogon, appears to have been taken from Registry No. 11, Page No. 68, Book No. XXVI of the Register of Births of the said municipality. Respondent, who is a law graduate and a successful Bar examinee, should know that the entries in such official records are evidence of the facts therein stated (Sec. 38, Rule 130, Rules of Court). Yet, while he knew that We had required the submission of such birth certificate on March 28, 1974 (p. 210, rec.), and noted its submission on May 21, 1974 (p. 212, rec.), respondent did not do anything to have it expunged from the records. Neither did he take any steps to have the birth certificate corrected if indeed it carried an erroneous entry as he would have us believe. Hence, while the paternity of Emelda or Imelda Tan is not in issue in this case, We cannot but give more credence to the version of complainant Bitangcor in this case, that Emelda (Imelda) Tan is the result of her amorous relations with respondent.

A.C. No. 529-SBC

Complainant's evidence in this case consists of her own uncorroborated testimony as well as some rental receipts for respondent's apartment issued in his name and entrusted to Peredo (Exhs. "A" and "B", Folder of Exhibits), as well as twenty [20] receipts of deposits (Exh. "C") likewise in respondent's name and entrusted to Peredo; and two [2] tele-grams sent by respondent to Peredo (Exhs. "D" and "E").

Josefina T. Peredo, 24 years old, single, a Bachelor of Science in Industrial Engineering graduate and resident of 633 Cabral, Ermita, Manila, testified on direct examination (t.s.n., Nov. 28, 1972 and Jan. 31, 1973) that she first met respondent on July 31, 1971 at the birthday celebration of Reginaldo Tilanduca, a townmate and boardmate of respondent. She and a co-boarder named Violeta Dalida were invited and brought to respondent's apartment by their co-boarder, Mrs. Cynthia Miquiabas, who was requested by Tilanduca to invite her boardmates for his birthday celebration. The respondent, who was sharing an apartment with Tilanduca and their boardmate Conrado Tañada, went to the Amihan nightclub together with his boardmates, complainant Peredo, Miquiabas and Dalida. Peredo was paired with respondent, who became her dancing partner.

On August 8, 1971, respondent and Tañada invited Peredo and Miquiabas to a movie, and once inside, re-spondent made advances to Peredo. After that, they ate lunch at the apartment being occupied by the three [3] men. Peredo and Miquiabas again took lunch at the respondent's apartment on several occasions, after which they would go out strolling at the Luneta or visiting friends in pairs, with respondent and Peredo being the usual partners.

On August 18, 1971, respondent and Peredo became steadies or sweethearts. Peredo's birthday on August 19th was celebrated at the respondent's apartment with the respondent and his two [2] boardmates and some of her friends. She was again invited to have lunch with the respondent at his apartment on August 29, 1971. After this luncheon, respondent gave her "hard wine" which caused her dizziness and vomiting. That night the respondent took her to his room by force and succeeded in having carnal intercourse with her. Her resistance was overcome by his strength. Subsequently, he assured her that if something happened, he was going to marry her. In their subsequent conversation, he promised to marry her after the 1971 Bar examinations, which she had to accept because she was already disgraced. That first intercourse was followed by many others, about 2 to 3 times a week, as the respondent usually fetched her to bring her to his apartment.

In the latter part of September, 1971 they lived together as husband and wife in his apartment, up to the time the respondent left for his hometown in January 1972. When she reminded him of his promise of marriage after the Bar examinations, he answered that he was still financially unstable, but will marry her in the early part of January. But when January came he went home to Malaybalay, Bukidnon. She saw him off with friends at the airport. He promised to come back in April. But when he returned in April, he informed her that he was already married. When she reminded him about his promise, respondent reasoned out that he was forced ("napasubo") to marry somebody else in the province because she was already three [3] months pregnant (t.s.n., Nov. 28, 1972, pp. 2-15).

On the other hand, respondent, in his testimony, denied ever having carnal knowledge of complainant Peredo, and having lived with her as husband and wife (t.s.n., Sept. 6, 1973, pp. 2-14). While he admitted that they were sweethearts (t.s.n., Sept. 6, 1973, p. 15), he presented his two boardmates to attest to the fact that Peredo has never gone up to any of their bedrooms at the second floor of their apartment, as she usually comes during daytime and stays only in the sala downstairs (t.s.n., Aug. 27, 1973, p. 10, and t.s.n., Nov. 2, 1973, p. 11). He and his witnesses likewise described their sleeping arrangements thus: Tilanduca and respondent were occupying one bedroom as they were both reviewing for the Bar, while Tañada occupied the other bedroom (t.s.n., Aug. 27, 1973, p. 11, and t.s.n., Nov. 2, 1973, p. 7). Both bedrooms were furnished with only single spring beds, each bed good only for one person (t.s.n., Aug. 27, 1973, p. 11, and t.s.n., Nov. 2, 1973, p. 7).

Cynthia Miquiabas, 29 years old, married, teacher and residing at Malaybalay, Bukidnon, testified that she came to meet complainant Peredo in July, 1971 at her boarding house in Ayala Boulevard, Manila, where Peredo also boarded (t.s.n., June 4, 1973, pp. 2-3). Respondent is her [Miquiabas'] childhood friend and townmate. She introduced Peredo to respondent on July 31, 1971 when Reginaldo Tilanduca, another friend and townmate, invited them to his birthday celebration that day (t.s.n., June 4, 1973, p. 3). Their group of six consisting of Josie [Peredo], Boy [respondent], Tilanduca, Tañada, Vicky Dalida and herself ate first at Max's Restaurant at Maria Orosa Street, then proceeded to Amihan nightclub (t.s.n., June 4, 1973, p. 4). Later they had merienda at the Aristocrat Restaurant and went home at 4:00 A.M. (t.s.n., June 4, 1973, p. 5). Peredo again met the respondent at the celebration of her [Peredo's] birthday in his apartment (t.s.n., June 4, 1973, p. 8). But before said birthday celebration, Peredo was being visited in their boarding house by two [2] other male friends, named Arthur [surname unknown to witness] and Henry Adasa (t.s.n., June 4, 1973, p. 7). Arthur was a married man who was also studying at Adamson like Peredo. He was boarding at the YMCA. She claims that she once accompanied

Josie [Peredo] to visit Arthur at the YMCA and Peredo and Arthur usually came home from school together (t.s.n., June 4, 1973, p. 7).

Peredo never told her [witness Miquiabas] of any indignity or impropriety committed by respondent on her person after the August 19th birthday celebration (t.s.n., June 4, 1973, p. 9). Peredo visited again respondent's apartment after the said birthday. She also continued to receive other male visitors in her boarding house (t.s.n., June 4, 1973, p. 10). She left the boarding house in March [1972] when everybody else transferred because the landlady decided not to accept boarders anymore.

The respondent and his witnesses tried to establish that no sexual intimacy could have taken place between Peredo and the respondent in the latter's apartment because the bedrooms therein were equipped only with single spring beds, aside from the fact that the respondent was sharing a room with Tilanduca. They further alleged that Peredo used to come only during daytime and stayed downstairs without going up to the bedrooms, which are at the second floor of the apartment.

All the above circumstances, however, will not prevent a determined man from taking a woman, especially his sweetheart who must have been so in love and had been promised marriage. Furthermore, the testimonies of the witnesses should be taken with caution, since they are all close friends and either townmate or boardmate of the respondent. Their testimonies could be biased to prevent respondent's disqualification from the practice of law. The same motivation could have prompted Mrs. Miquiabas, a childhood friend and townmate of respondent to testify against Peredo, her co-boarder, when she said the latter had been seeing other men aside from respondent. There was, however, nothing in her testimony nor in the testimonies of the other witnesses for respondent, to suggest that Peredo was a woman of loose morals.

On the other hand, Peredo is a college graduate and seems to be sensible, although apparently in love with respondent. The investigator, who had a chance to observe the deportment and demeanor of the witnesses, is convinced that Peredo was telling the truth when she testified that she was seduced with a promise of marriage by respondent (p. 189, rec.).

In the same way that We give weight to the findings of fact of a trial court, considering the better position of the latter to decide the question of credibility for having heard the witnesses themselves and observed their deportment and manner of testifying during the trial (People vs. Laguisma, 98 SCRA 69 [1980]; People vs. de la Cruz, 97 SCRA 386 [1980]; People vs. Bautista, 92 SCRA 465 [1979]), We cannot but believe that the respondent had indeed indulged in pre-marital relations with Peredo. Besides, respondent himself admitted that they were sweethearts (t.s.n., Sept. 6, 1972, p. 15) and that they used to go out together (t.s.n., Sept. 6, 1972, p. 9), which closeness could lead to physical intimacy. In any case, no sensible woman -- a college graduate at that -- will openly admit having been sexually intimate with a man if it were not true.

From all the circumstances, the inescapable conclusion is that the respondent had fallen short of the requisite morality for admission to the Bar (Section 2, Rule 138, Rules of Court). He violated the honor of, not one, but two women.

Be that as it may, We note that the years have chastened respondent who appears to be contrite, as shown by the two telegrams he sent to the Supreme Court on October 14 and 23, 1980 with almost identical message, as follows:

"x x I submit that agony of waiting has been sufficient discipline and I pledge myself to live up to the standard of conduct of attys. established by the Supreme Court" (pp. 223 & 225, rec.).

Ten years have gone by since the 1971 Bar examinations which qualified respondent to be a lawyer, and nine

years since he was denied the privilege to practice his profession. There appears to be no other indiscretion attributed to him in the meanwhile.

In the case of Barba vs. Pedro (61 SCRA 484, 487 [1974]), the Court thru then Associate Justice, now Chief Justice Enrique M. Fernando, held:

"It cannot be denied that respondent's conduct left much to be desired. He had committed a transgression, if not against the law, against the high moral standard requisite for membership in the bar. He had proven false to his word. What is worse, he did sully her honor. This on the one side. On the other hand, eighteen years had gone by from the time of the 1956 examinations. He was a successful bar candidate but because of this lapse from moral propriety, he had not been allowed to take the lawyer's oath. It likewise appears, from the testimonials submitted, that he has behaved rather well. At least, no other misdeed has been attributed to him. There is no affront to reason then in ruling that the punishment, while deserved, has lasted long enough. He has sufficiently rehabilitated himself. Retribution has been exacted. He has expiated for his offense. It is understandable that the bitterness in the heart of complainant cannot easily be erased, but that should not prove decisive. Even the most heinous of crimes pre-scribe after a certain period. Moreover, as the transgression resulted from the frailty of flesh, the sociologist MacIver referring to it as 'so powerful an appetite,' an imperative of life closely associated with the 'recklessness and the caprice of desire,' this Court feels that all the years he has been denied the privilege of being a lawyer would satisfy the requirement that failure to live up to the requisite moral standard is not to be taken lightly. It could also be said that in offenses of this character, the blame hardly belongs to the man alone. [Soberano vs. Villanueva, Administrative Case No. 215, December 29, 1962, 6 SCRA 91]."

In the same way, We hold that the respondent herein has sufficiently suffered for his immoral conduct.

WHEREFORE, THE RESOLUTION OF FEBRUARY 29, 1972 IS HEREBY SET ASIDE, AND RESPONDENT RODOLFO M. TAN IS HEREBY ALLOWED TO TAKE THE LAWYER'S OATH.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Ericta, Plana, and Escolin, JJ., concur.

Aquino, J., dissents. He agrees with Atty. Sevilla's recommendation.

Melencio-Herrera, J., no part.

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