

IN THE MATTER OF THE LOSS OF ONE (1) TAMAYA TRANSIT, AN EXHIBIT IN CRIMINAL CASE NO. 193.

Adm. Matter No. P-2328. June 29, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These two (2) administrative cases involve certain exhibits in criminal cases filed with the Court of First Instance of Aurora at Baler which were in the official custody of respondent. In Administrative Matter No. P-2328 a wrist watch was pawned by him while in his custody as an exhibit in Criminal Case No. 193. Administrative Matter No. P-2328 concerns the loss of one (1) unit of "Tamaya Transit" which is an exhibit in Criminal Case No. 533. The same was lost at the time respondent was the acting office-in-charge of the Office of the Clerk of Court.

Administrative Matter No. P-2328

It appears that a Tamaya Transit was found missing from the Office of the Clerk of Court, as it was so discovered on April 21, 1979 by Edwin C. Bijasa, a security guard of the Court. Bijasa reported the matter to Salvador Lopez, Jr. who was then the Officer-in-charge. The latter, instead of inquiring or reporting the loss to the Executive Judge, advised Bijasa to keep quiet and just let the loss be discovered when the exhibit will be withdrawn for the trial. It was only on September 24, 1979 that the fact of loss was reported to the Executive Judge by Manuel D. Sindac, a clerk in said Court. Forthwith Judge Ernesto Valencia conducted an investigation and made the following findings and recommendations:[1]

"Sometime before April 21, 1979, x x x Security Guard Bijasa took the Tamaya Transit out of the lower section of the big wooden cabinet in the office of the clerk of court where it was being kept together with other exhibits, and put it on top of the table of Clerk III Manuel D. Sindac, x x x because he thought of letting Mr. Gimena, who has not seen it yet, to see it and of peeping through it for fun although the Executive Judge prohibited them from moving or touching these exhibits. Messrs. Bijasa, Gimena and Cortez peeped through it while Clerk III Salvador Lopez, Jr. was at their back typing, and then Mr. Bijasa returned it to its place. At that time the exhibits of both pending and terminated criminal cases were kept in three separate places in the wooden cabinet, in a steel safe cabinet, and steel cabinet. The wooden cabinet has a lock but it can be opened easily."

"On April 21, 1979, a Saturday, at about 9:30 in the morning, Mr. Bijasa noticed the transit missing while looking for an ax he was ordered to look for the day before. He told Court Stenographer Isabel Q. Ferreras, who was with Court Stenographer Helen T. Querijero in the stenographers room across the session hall that he was worried about the missing transit and that he was not the one assigned there but Mr. Gimena. He took leave of Mrs. Ferreras and said that he would go to Mr. Gimena to ask whether he transferred the transit. He went to the house where the baptismal celebration of Mr. Cortez' son was being prepared and told Mr. Gimena that the transit was missing. Mr. Cortez told Mr. Bijasa, "Mahirap yan. Ang mabuti i-report ninyo sa incharge ng office of the clerk of court." Mr. Gimena told Mr. Bijasa to report the matter because he was the one who found that it was missing. A little later Janitor Ferreras arrived and Mr. Bijasa asked him if he happened to transfer the transit to another place but he said he did not. After a few minutes, Mr. Lopez, Jr. arrived. Mr.

Bijasa reported to him that the transit was missing in the presence of Mr. Ferreras, Mr. Gimena and Mrs. Ferreras, and Mr. Lopez, Jr. said that they should keep silent about it and let its loss be discovered when the exhibit would be withdrawn and further said that if they divulge that matter they might be removed from their jobs. Mr. Bijasa told Mr. Lopez it was up to him to take care as long as he had already reported as he was acting clerk of court and he can choose what he wanted. Mr. Lopez, Jr. went to the place where the transit was kept and found it was not there. x x x He looked at the windows, made observations and found nothing destroyed. Thinking that the transit was really missing, he reminded Mr. Bijasa and the other security guard, Mr. Gimena, that they were the first hand persons that could be answerable for it, and told Mr. Bijasa that he was giving him time to locate it before he brought the matter to the Executive Judge and instructed him to exert diligent effort to find it and make a formal report to him as to the result of his search.

"Mr. Lopez, Jr. never reported the matter immediately or thereafter to the Executive Judge because he pitied the two security guards. He gave Mr. Bijasa time to locate the transit and even dissuaded him from reporting to the District Judge saying that if he did he would be removed from his job. He had been reminding them about it five times the last being in September - to please make efforts to locate it and he had been waiting for Mr. Bijasa to make a formal report to him of the result of his search.

"On September 19, 1979, Mr. Bijasa reported to Mr. Sindac that the transit was missing and because time was passing and a long time has already elapsed, the latter verbally reported the matter to Sgts. Taneza and Brameje of the Philippine Constabulary, to Policeman Celso Leynes of Baler and PFC Jose Galam of Maria Aurora. On September 24, 1979, Mr. Sindac filed the letter addressed to the Executive Judge, quoted at the beginning, reporting that the transit was discovered missing by Mr. Bijasa on April 21, 1979.

"No evidence whatsoever was discovered that someone took the transit, so no recommendation can be made that a charge be brought against anyone. But two things stand out: 1) the taking of the transit by Mr. Bijasa out of the wooden cabinet and his exhibiting it on top of the table of Mr. Sindac considerably helped in its disappearance and 2) the deliberate failure of Mr. Lopez Jr. to report that it was missing to the Executive Judge from April 21, 1979 to September 24, 1979 greatly hindered the solution of the crime.

"x x x The foregoing shows that Mr. Bijasa is meddlesome and officious and which do not sit well with the requirements of his office - he has become unfit for his present position. So the temporary appointment as Court Security Guard in this court was not renewed. The appointment of Mr. Bijasa expired on Jan. 2, 1980. x x x He is actually out of the government service from that date.

"Mr. Lopez Jr. likewise admitted that he never reported the matter immediately or thereafter to the Executive Judge for the reasons already enumerated above. He assumed office as clerk in this court on December 17, 1962, served continuously, is now Clerk III and on April 21, 1979 was clerk-in-charge of the office of the clerk of court. As such he should have known that an immediate report of the matter to the Executive Judge was necessary so that the proper steps to solve the problem could have been started at once. For such failure he should be admonished.

x x x."

Administrative Matter No. P-2386

While Administrative Matter No. P-2328 was being investigated by Judge Valencia, court stenographer Helen T. Querijero testified that Edwin Bijasa mentioned that respondent allegedly took out of the court a wrist watch which is an exhibit in Criminal Case No. 553, then pawned it to several persons, one after the other. As a result of said testimony, Judge Valencia conducted an investigation. We quote his findings as follows:

"It appears that in September 1978, after Clerk III Manuel D. Sindac returned from leave, he found that the Actus calendar wrist watch which is an exhibit in Criminal Case No. 553, People vs. Wilfredo Azarias for theft, was not anymore in the safe steel cabinet where it was being kept alone separately from the other

exhibits. At that time he was the most senior personnel in the office of the clerk of court because Clerk of Court Andres Cadiz was already on terminal leave. He approached Clerk III Mr. Salvador Lopez Jr., the latter admitted taking the watch and he asked him to return it but the latter did not. He asked Mr. Lopez to return the watch many times, almost everyday from then on, but the latter did not return it so he insisted on asking for a receipt and, maybe in that same month of September, Mr. Lopez gave him one acknowledging receipt of the watch from him on that date. He did not report to the Executive Judge, in his own words: "because believing that the case was already terminated and the case will crop (up) only when the owner will file a motion to withdraw the exhibit, I think that will be the time only when a case should be filed against him (Mr. Lopez), and believing that a re-ceipt was already issued to me it was possible that I was safe of that wrist watch.

"In November 1978, Court Stenographer Mr. Henry P. Gofredo saw the watch being worn by a stout prostitute whom he supposed to be Elizabeth Luzon who was then coming to the courthouse almost everyday.

"In 1979, Court Security Guard Mr. Edwin C. Bijasa saw Mr. Lopez wear the watch outside. He also saw Elizabeth Luzon wear the watch when he and Court Security Guard Mr. Rudy Gimena went to their restaurant near the public market of Baler. She even said that the watch came from a woman in a beer house and added that "if Mr. Lopez will not pay his debts I will be forced to bring this watch to the Judge. x x x.

"In February 1979, Mr. Gofredo saw the watch in Max Repair Shop of his friend Mr. Maximo in the stall of Mrs. Anita Quijano in the public market in Baler. He asked, "Is that the watch of the court?" and Mr. Maximo answered yes this was brought by a person from the court-house because it was damaged but did not mention the name of the person. x x x.

"In April 1979, Mr. Gofredo saw Mr. Rudy Gimena wear that watch. Mr. Gimena handed it to him for adjustment because the date was not appearing automatically in the calendar window x x x.

"After April, Mr. Gofredo did not see the watch anymore, but in September 1979, he saw it worn by Mr. Lopez and then by Mr. Wilfredo Ferreras during the burial of Mr. Jose Glemao and almost everyday after that. When Mr. Ferreras passed thru the session hall wearing the watch, and he and Mr. Bijasa were in the room of the stenographers, he asked the latter, "Is that not the watch is an exhibit in a criminal case here?" Mr. Bijasa told him that is the watch which is an exhibit here.

"On October 9, 1979, while Administrative Matter No. 6 was being investigated in chambers, Court Steno-grapher Mrs. Isabela Q. Ferreras and Mr. Bijasa were at the lawyers' table in the session hall. Mr. Lopez came from the outside, he entered the office of Mr. Sindac and he handed a watch to the latter who was sitting by his desk. Mr. Bijasa said that the watch was returned. The watch handed by Mr. Lopez to Mr. Sindac was the Actus watch in question. Mr. Sindac gave it to Mr. Teodoro Dajoras, Laborer-clerk-designate of the court, and told him to put it in another safe steel cabinet where exhibits were placed. Then while Mr. Efraim Mora, Deputy Sheriff Trinidad and Mr. Bijasa were on the steps leading to the session hall, Mr. Wilfredo Ferreras mentioned that they just redeemed said watch from Mr. Mando Valenzuela and even mentioned that the watch was pawned to several persons already. From September 1978 after Mr. Sindac returned from leave up to October 9, 1979 when Mr. Lopez returned the watch to him, or a period of more than one year, the said watch was not in the possession of the office of the clerk of court."[2]

Judge Valencia in his findings and recommendations, stated that respondent admitted that sometime in 1978, he brought out the Actus watch in question from the steel safe cabinet and wore it for a few hours; that the said watch was in the cabinet in the latter part of 1978 until the middle part of 1979 and he has in fact issued a receipt acknowledging that the watch was in his possession during said period; that he pawned a watch to Elizabeth Luzon and to Wilfredo Ferreras who in turn pawned it to Mando Valenzuela, but respondent claimed that it was his own watch that was pawned, not the watch in question; that he sold his own watch to his cousin Pedro Lasam.

Confronted with the question of whether respondent pawned the exhibit-watch or his own watch Judge Valencia

found also as follows:

"Mr. Lopez pawned the exhibit watch, for:

"First, said watch was not in the office of the Clerk of Court for a period of more than one year - from September 1978 after Mr. Sindac returned from leave up to October 9, 1979 when he (Mr. Lopez) returned it to him.

"Second, during that period he never showed it to Mr. Sindac.

"Third, he issued a receipt for it, confirming the next two preceding subparagraphs, and making his claim that at the time he issued it said watch was just there, in the second shelf of the safe steel cabinet in the office of the Clerk of Court, incongruous, since one would not issue a receipt for something that was just there and could be easily shown or handed over.

"Fourth, before he returned said watch on October 9, 1979, while Administrative Matter No. 6 was being investigated, he came from outside, he entered the office of Mr. Sindac and he handed it to the latter who gave it to Mr. Dejas and told him to put it in another safe steel cabinet where exhibits are placed - and Mr. Wilfredo Ferreras told Mr. Efraim Mora, Deputy Sheriff Manuel Trinidad and Mr. Edwin C. Bijasa on the steps leading to the session hall that they just redeemed that watch from Mr. Mando Valenzuela.

"Fifth, he neither presented a watch he pretended to own nor cited his cousin, Pedro Lasam, to bring said watch, denying credence to his ploy that he had his own watch which he pawned to Elizabeth Luzon and Wilfredo Ferreras who pawned it to Mando Valenzuela without his knowledge and which last September 1979 he was forced to sell to his cousin, Pedro Lasam, who came to Baler as at that time he urgently needed cash."[3]

In view of his findings, Judge Valencia recommended that respondent be reprimanded.

These two (2) cases were then referred to Deputy Court Administrator Romeo D. Mendoza for study, report and recommendation. The recommendation of Deputy Court Administrator Mendoza, concurred in by Justice Lorenzo Relova, then Court Administrator, is that respondent Salvador Lopez Jr. be found guilty of dishonesty, grave misconduct prejudicial to the best interest of the service for which he should be separated from the service with forfeiture of all his retirement benefits and pay with prejudice to reinstatement in any branch of the government or any of its agencies or instrumentalities.

We agree with said recommendation. By taking out, pawning or even selling the questioned watch which is an exhibit in a case, respondent has shown a glaring unfitness for the position he holds which requires integrity and trustworthiness. Among the most important duties of a clerk of court, is the custody and care of the exhibits, along with his duty to safely keep all records, papers, files, and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.[4]

As custodian of the missing Tamaya Unit, he should have taken immediate steps to locate the same upon receiving information that it was missing. His indifferent attitude in not informing his Judge about the loss is most improper if not suspicious. It reveals his utter unworthiness of the trust required by the position he holds.

WHEREFORE, and in accordance with the foregoing recommendation, respondent Salvador Lopez, Jr. is hereby found guilty of dishonesty, grave misconduct prejudicial to the best interest of the service, for which he should be separated therefrom, with forfeiture of all his retirement benefits and pay, with prejudice to reinstatement in any branch of the government, or any of its agencies or instrumentalities.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] pp. 16-20, Rollo.

[2] pp. 90-92, Rollo.

[3] pp. 92-93, Rollo.

[4] Section 7, Rule 136, Rules of Court.

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