

OFFICE OF THE COURT ADMINISTRATOR, PETITIONER, VS. JUDGE FILOMENO PASCUAL, RESPONDENT.

A.M. No. MTJ-93-783. July 29, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Intimating as to what the ideals of a good judge should be, Sir Francis Bacon wants judges "to remember that their office is *jus dicere* and not *jus dare*, to interpret law, and not to make law or give law." They ought to be "more learned than witty, more revered than plausible, and more advised than confident. Above all things, INTEGRITY is their portion and proper virtue."^[1]

The Constitution and the statutes, however, limit the legal qualifications of judges to only three bare essentials: citizenship, age and experience. The virtues of probity, honesty, temperance, impartiality and integrity, most often used to measure an aspirant to the bench, lose their meaning in individual perception.

While people perceive judges to be above the ordinary run of men, they know that a perfect judge, like a perfect priest, exists only in fantasy.

Thus, it does not come as a surprise that the integrity of respondent judge in this administrative case stands challenged for committing acts of extortion or bribery.

The following antecedent facts appear on record:

Sometime in February, 1993, a certain Ceferino Tigas wrote a letter, addressed to Hon. Reynaldo Suarez of the Office of the Court Administrator of the Supreme Court, charging that irregularities and corruption were being committed by the respondent Presiding Judge of the Municipal Trial Court of Angat, Bulacan.

On March 10, 1993, the letter was referred to the National Bureau of Investigation in order that an investigation on the alleged illegal and corrupt practices of the respondent may be conducted. Ordered^[2] to conduct a "discreet investigation" by the then NBI Director Epimaco Velasco were: SA Edward Villarta, team leader, SI Reynaldo Olazo, HA Teofilo Galang, SI Florino Javier and SI Jose Icasiano. They proceeded to Angat, Bulacan, in order to look for Ceferino Tigas, the letter writer. Tigas, the NBI team realized was a fictitious character. In view of their failure to find Tigas, they proceeded to the residence of Candido Cruz, an accused in respondent's sala.

In his affidavit^[3] executed on March 23, 1993 before SA Edward Villarta, Cruz declared that he was the accused in Criminal Case No. 2154, charged with the crime of Frustrated Murder. Respondent judge, after conducting the preliminary investigation of the case, decided that the crime he committed was only physical injuries and so, respondent judge assumed jurisdiction over the case. Cruz believed that he was made to understand by the respondent that, in view of his favorable action, Cruz was to give to respondent the sum of P2,000.00. Respondent judge is believed to be a drunkard and, in all probability, would need money to serve his vice.

In view of this statement, the NBI agents assigned to the case caused respondent judge to be entrapped, for which

reason, the judge was thought to have been caught in flagrante delicto. NBI agents Villarta and Olazo filed the following report:

"On 25 March 1993, at about 4:00 in the afternoon, CANDIDO CRUZ met with Judge PASCUAL at the Colegio de Sta. Monica, near the Municipal Building of Angat, Bulacan, where Subject is attending the graduation of his daughter. CANDIDO CRUZ told Judge PASCUAL that he already had the P2,000.00 which he (Judge PASCUAL) is asking him. However, Judge PASCUAL did not receive the money because according to him there were plenty of people around. He then instructed CANDIDO CRUZ to see him (Judge PASCUAL) at his office the following day.

At about 8:30 in the morning of the following day (26 March 1993), CANDIDO CRUZ proceeded to the office of Judge PASCUAL at the Municipal Trial Court of Angat, Bulacan, and thereat handed to him four (4) pieces of P500.00 bills contained in a white mailing envelope previously marked and glazed with fluorescent powder.

In the meantime, the Undersigned stayed outside the court room and after about 15 minutes, CANDIDO CRUZ came out of the room and signaled to the Undersigned that Judge PASCUAL had already received the marked money. The Undersigned immediately entered the room and informed Subject about the entrapment. Subject denied having received anything from CANDIDO CRUZ, but after a thorough search, the marked money was found inserted between the pages of a blue book on top of his table.

Subject was invited to the Office of the NBI-NCR, Manila wherein he was subjected to ultra violet light examination. After finding Subject's right hand for the presence of fluorescent powder, he was booked, photographed and fingerprinted in accordance with our Standard Operating Procedure (S.O.P.).

On even date, the results of our investigation together with the person of Judge FILOMENO PASCUAL was referred to the Inquest Prosecutor of the Office of the Special Prosecutor, Ombudsman, with the recommendation that he be charged and prosecuted for Bribery as defined and penalized under Article 210 of the Revised Penal Code of the Philippines." (Rollo, pp. 47-48.)

On May 11, 1994, by resolution of the Third Division of this Court, this case was referred to Executive Judge Natividad G. Dizon for investigation, report and recommendation.[4]

In connection with this investigation, respondent filed a Memorandum, dated July 28, 1995, wherein respondent presented his version of the case:

"Sometime in February 1993, one Ceferino Tigas, a fictitious person according to the NBI, wrote a letter to Court Administrator Ernani Paño of the Supreme Court, alleging irregularities committed by the accused. Deputy Court Administrator Reynaldo L. Suarez endorsed the letter to the NBI Director requesting 'discreet' investigation of the Tigas letter. An NBI tandem of Agents Edward Villarta and Reynaldo Olazo proceeded to Angat, Bulacan, to investigate. Said tandem's assignment was merely to conduct discreet investigation supposedly, but it led to incriminatory machinations, planting evidence, unlawful arrest, illegal search and seizure. They contacted Candido Cruz who was mentioned in the letter. They, however, discovered that Ceferino Tigas, the alleged letter writer, was an inexistent person, fictitious as shown by the synopsis report of the NBI agents (Exhibit 8). Having contacted Candido Cruz, the NBI agents persuaded him to participate in what they called 'entrapment operation.' The NBI agents prepared an affidavit, then a supplementary affidavit and had them signed by Candido Cruz. They also went to the NBI Headquarters and had four (4) P500 bills dusted with fluorescent powder which they used in the 'operation' against the accused.

In the afternoon of March 25, 1993, the NBI, along with Candido Cruz, proceeded to the municipal building of Angat, Bulacan, where the accused judge was holding office. However, they learned that the accused judge was not in his office but was then attending the graduation rites of his son at the nearby Colegio de Sta. Monica, and so they decided to move their 'operation' to the school grounds. The ceremonies had not yet begun. Candido Cruz saw the accused in one corner of the compound and approached him. He tried to give the

accused an envelope allegedly containing money, but the judge refused to accept it and angrily drove Candido Cruz away. Rebuffed, the NBI agents decided to reset their 'operation' the following day.

At around 9:30 in the morning of March 26, 1993, the NBI agents and Candido Cruz arrived at the municipal building of Angat, Bulacan. Cruz, as planned, entered the accused judge's chambers and placed an envelope, allegedly containing marked money, right on his (judge's) desk. He thought it was a pleading for filing and he told Candido Cruz to file it with the office of the clerk of court at the adjacent room. Cruz replied that it was the money the judge was asking for. Upon hearing the reply, the accused suddenly erupted in anger, he grabbed the envelope on the desk and hurled it to Cruz. The envelope fell on the floor, the accused picked it up and inserted it inside the pocket of Cruz's polo shirt and drove him out of the chamber.

Just seconds thereafter, agents Villarta and Olazo entered the door of the chamber which door was open at that time. They introduced themselves and told the accused that the money that Cruz gave him was marked. Accused told them that he did not receive or accept money from Cruz. But they proceeded to search the room, the table, its drawers, and every nook and cranny of his room, including the pockets of the accused's pants. After scouring the place, the agents failed to find the envelope with the marked money. And so, one of the agents called for Candido Cruz who was waiting outside at a waiting shed fronting the municipal building, and asked him where the envelope was. Cruz came back to the room and, together with agent Olazo, approached the cabinet and said 'heto pala.'

Then, the accused's humiliating experience began. Thereafter, despite the strident protestations of the accused, the envelope, which came from the pocket of Cruz's polo shirt, was placed on top of the table of the judge, pictures were taken, and the accused was arrested by the NBI agents."[5]

On August 11, 1995, Executive Judge Natividad G. Dizon submitted the following report and recommendation:

"The Investigating Judge respectfully submits her findings based on the evidence at hand.

As against the respondent judge's denials, the undersigned submits that the sworn affidavits of complainants and NBI Agents and documentary proofs attached to the records are more convincing and nearer to the truth. They have no motive for fabricating this charge, except to bring justice. Credence should be given to the testimony of the NBI Agents coming as it does from an unpolluted source. These Agents had no reason to testify falsely against the respondent judge. They were just doing their duty. On the other hand, the respondent judge had to protect himself against the testimonial and technical/scientific evidence that he had received the envelope and to reject its implications of such evidence.

Furthermore, his defense that he was just instigated to commit a crime is likewise untenable. The principle evolved from the cases appears to be that in a prosecution for an offense against the public welfare, such as accepting bribe, the defense of entrapment cannot be successfully interposed; x x x.

One may well wonder over the manner the envelope containing the money was proffered to the respondent judge as he narrated his story on how he got mad at Candido Cruz when he proffered the said envelope, how he threw, picked it up and placed it in the pocket of the latter and how he drove him away. He even testified that it was just 'planted' by the NBI Agents when the latter allegedly placed the envelope inside a directory which was placed on top of a cabinet.

x x x. Why was he not surprised that somebody barged into his chamber or was he really accustomed with people directly dealing or negotiating at his chamber, as what Cruz did, instead of dealing with his staff. His 'angry words' and his actuations, according to his testimony, were not convincing at all to show that he was that fuming mad at Candido Cruz's offer. More so, his claim that NBI Agents connived with Candido Cruz just for their own personal glory was not even persuasive. His excuse of the presence of fluorescent powder on his hand was flimsy and incredible.

The act of the respondent shows that he can be influenced by monetary considerations. This act of the

respondent of demanding and receiving money from a party-litigant before his court constitutes serious misconduct in office. It is this kind of gross and flaunting misconduct, no matter how nominal the amount involved on the part of those who are charged with the responsibility of administering the law that will surely erode the people's respect for law and lose faith and trust in the courts which are expected to render fair and equal justice to all.

Such act go against Canons 2 and 3 of the Code of Judicial Conduct which state: A Judge should avoid impropriety and the appearance of impropriety in all activities and a judge should perform official duties honestly, and with impartiality and diligence.

xxx xxx xxx

With the above, the Investigating Judge respectfully recommends that appropriate penalty be imposed upon the respondent."

We find that the evidence on record does not warrant conviction.

We note that the only bases for the Report and Recommendation submitted by Executive Judge Natividad G. Dizon consist of: The Complaint, the Answer, the Memorandum of the respondent, and the transcript of stenographic notes of the hearing of the bribery case of respondent judge at the Sandiganbayan. The respondent was, therefore, not afforded the right to open trial wherein respondent can confront the witnesses against him and present evidence in his defense.

This lapse in due process is unfortunate. The Rules, even in an administrative cases, demand that, if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge.[6] The Judiciary to which respondent belongs demands no less. Before any of its members could be faulted, it should be only after due investigation and after presentation of competent evidence, especially since the charge is penal in character.[7] The above-quoted Report and Recommendation of the investigating judge had fallen short of the requirements of due process.

The evidence aforesaid admits of irreconcilable inconsistencies in the testimonies of principal witness, Candido Cruz, and NBI Agent SI Reynaldo Olazo on several material points.

It will be remembered that the charge was intimated by someone who must have had an ax to grind against the respondent judge but who, by reason of cowardice or lack of evidence to put up a righteous case, did not come out in the open and instead wrote an anonymous letter. The letter-writer, naming himself as Ceferino Tigas, did not specify crimes committed or illegal acts perpetrated but charged respondent with anomalies in general terms. Respondent judge could not have been expected to make a valid answer or to otherwise defend himself from such vague accusations.

While then NBI Director Epimaco Velasco, upon being apprised of the Tigas letter, ordered the NBI investigating team to make a "discreet investigation" of respondent, the NBI team had instead caused an instigation or the entrapment of respondent judge. Not having found letter-writer Tigas and concluding that no such person exists, they sought out an accused before respondent's court who could possibly be respondent judge's virtual victim. Approached by the NBI team was Candido Cruz, a person who had been brought before the Municipal Trial Court of Angat, Bulacan, for preliminary investigation on the charge of Frustrated Murder. Respondent judge gave judgment to the effect that the crime committed by Candido Cruz was that of physical injuries merely. He declared then that he had original jurisdiction to try the case.

But, respondent's action in this regard was perpetrated some time before Candido Cruz was "persuaded to participate in what they (the NBI agents) called 'entrapment operation.'" The opportune time to bribe the respondent should have been before he acted in reducing Cruz' criminal liability from Frustrated Murder to

Physical Injuries. No bribe was asked then. It was unlikely that respondent would ask for it on the date of the entrapment on March 26, 1993, the favorable verdict having been rendered already.

It is significant to note that NBI Agent Olazo admitted[8] that, despite the fact that he "scoured" the table of the respondent in search of the envelope, with marked money in it, no envelope was found and so he had to call Candido Cruz who was already outside so that Cruz can locate the envelope.

In view of these antecedents, we find reason to favorably consider the allegations of respondent judge in his defense that, at around 9:30 o'clock in the morning of March 26, 1993, Candido Cruz, along with the NBI agents, went to the Municipal Building of Angat, Bulacan. Candido Cruz, alone, went inside respondent judge's chambers, located thereat, and placed before respondent judge an envelope containing marked money. Respondent judge thought that what was placed before him was a pleading for filing and so, he told Candido Cruz to file it with the Office of the Clerk of Court, that is, in a room adjacent to his chambers. Candido Cruz replied that it was the money the judge was asking for. Upon hearing this reply, respondent judge suddenly erupted in anger. He grabbed the envelope on the desk and hurled it at Candido Cruz. The envelope fell on the floor. Respondent judge then picked it up and inserted it inside the pocket of Cruz' polo shirt and drove him out of his chambers. NBI Agents Villarta and Olazo immediately entered the door of the judge's chambers, introduced themselves, and told respondent judge that the money that Cruz gave him was marked. Respondent judge told them that he did not receive or accept money from Candido Cruz. After respondent judge said this, the NBI Agents nevertheless proceeded to search the room, examined tables, drawers, and every nook and cranny of respondent's chambers, and the pockets of the pants of respondent judge. Even after rigid search of the chambers of respondent, the NBI Agents failed to find the envelope containing marked money allegedly given by Candido Cruz to respondent judge.

Candido Cruz, who had gone down to the waiting shed, was called for by one of the agents. Candido Cruz was asked as to the whereabouts of the envelope containing money. Candido Cruz went back to the judge's chambers and made the motions of conducting a search. Eventually, he went straight to the top of a cabinet and, in the manner of a magician, produced the envelope with marked money, saying, "heto pala".

Thereafter, photographs were taken of respondent judge who was humiliated no end by the fact that the envelope with marked money was placed on top of his desk with respondent judge in front of it.

In his testimony before the Sandiganbayan, NBI Agent SI Reynaldo Olazo stated that the marked money used in their entrapment operation actually came from Candido Cruz and not from the NBI;[9] and he was not able to see what actually transpired between Candido Cruz and respondent judge inside the chambers of the judge. He was outside the judge's chambers and entered it only after Candido Cruz gave the signal that the money was already delivered by him to the respondent.[10] Candido Cruz, on the other hand, testified that the marked money used in the alleged entrapment operation was given to him by the NBI[11] and, when he went out of the judge's chambers after giving the money, he signaled to one, Col. Javier, who was then positioned immediately outside the chambers.[12]

In view of the foregoing facts, it is easy to conclude that the acts of the NBI agents which triggered the incident that transpired inside respondent judge's chambers constituted instigation and not entrapment as claimed by the prosecution. It is evident that Candido Cruz was induced to act as he did in order to place respondent judge in a compromising situation, a situation which was not brought about by any request of respondent judge. It is surprisingly strange that an accused in a case would simply barge into the judge's chambers without rhyme or reason, place bribe money on top of the judge's desk without so much as explaining what the money was for. Respondent judge's action on Candido Cruz's case which favored Cruz was effected long before. We can believe

the fact that, under the circumstances, respondent judge did react in anger and threw the envelope at the accused Candido Cruz. The judge must have given back the money to Candido Cruz and literally drove Cruz out of his chambers bringing the money with him. This explains the reason why the NBI Agents notwithstanding a relentless search did not find the money inside the chambers. Four (4) NBI Agents made the search and they were unable to find the envelope with the marked money in it. This fact NBI Agent Olazo in effect admitted because he had to call back Candido Cruz in order to make Cruz divulge as to where the bribe money was placed. When, after all, Candido Cruz produced the money when he went back to the judge's chambers, it became obvious that the money when offered to respondent judge was not received by the latter.

The foregoing set of facts smacks of unlawful prosecution and planting of evidence amounting to persecution. It is reprehensible to say the least that NBI agents should entrap the respondent judge by illegal means, besmirch his reputation by the planting of evidence against him and make public the foregoing charges of bribery against him in the face of the unjustified and illegal incriminatory machinations perpetrated by the NBI agents in connivance with Candido Cruz.

We, thus, hold respondent Judge Filomeno Pascual blameless of the charge of bribery against him.

It should be noted that Candido Cruz insisted that he had participated in the alleged entrapment operation only because of the fact that the NBI agents made him believe that there was an order therefor from the Supreme Court.[13] Considering that he is illiterate and is already more than 70 years of age, it is understandable why he was easily persuaded by the NBI agents to cooperate without need of any threat whatsoever. Inconsistencies in his testimony is likewise attributed to his aforesaid personal circumstances for it does not jibe with practical experience that a person telling the truth will still have to struggle to remember everything that transpired, he having been a participant in the operation. Gross mistakes on very important points not easily forgotten are very strong indicia of the falsity of the story given by a witness.[14]

We reiterate the ruling in the case of *Raquiza v. Castaneda, Jr.*,[15] that:

"The ground for the removal of a judicial officer should be established beyond reasonable doubt. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption, incompetency, etc. The general rules in regard to admissibility of evidence in criminal trials apply."

Reasonable doubt is the inability to let the judicial mind rest easy upon the certainty of guilt after a thorough investigation of the whole evidence.[16] The principle of reasonable doubt being applicable in the instant case, therefore, we find that the alleged act of bribery committed by respondent has not been sufficiently and convincingly proven to warrant the imposition of any penalty against respondent.

WHEREFORE, in view of the foregoing, respondent judge is hereby exonerated and the administrative case against him is DISMISSED.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Francis Bacon, "Of Judicature," Handbook for Judges, Glenn R. Winters, 1975 Ed, p. 276.

[2] Rollo, p. 52.

[3] Rollo, pp. 11-12.

[4] Rollo, p. 286.

[5] Exh. 6-A, pp. 2-4.

[6] Raquiza vs. Castañeda, Jr., 81 SCRA 235, 244 [1978].

[7] Ibid.

[8] TSN, June 9, 1994, p. 23.

[9] TSN, May 3, 1994, p. 17.

[10] TSN, June 9, 1994, p. 14.

[11] TSN, Jan. 30, 1995, p. 14.

[12] Ibid., p. 33.

[13] TSN, January 30, 1995, p. 28.

[14] People vs. Hernandez, 91 Phil. 334 [1952].

[15] 81 SCRA 244 [1978].

[16] U.S. v. Lazada, 18 Phil. 90, 96 [1910].

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