

[ADMINISTRATIVE ORDER NO. 140, September 20, 1989]

SUSPENDING ASSISTANT PROVINCIAL FISCAL LEODEGARIO C. QUILATAN OF RIZAL.

This is an administrative case against Assistant Provincial Fiscal Leodegario C. Quilatan of Rizal filed by Alfredo Bautista for negligence, inefficiency and incompetence in the performance of duty.

Records show that, on June 11, 1973, a passenger jeepney driven by Enrico de Vera bumped Elviro Bautista, a 10-year old son of herein complainant Alfredo Bautista, resulting in the boy's death a few days later. On the basis of the police investigation report, the death certificate of the victim, and the written statements of witnesses Sixto de la Cruz and Meliton Constantino, an information for Reckless Imprudence Resulting in Homicide was filed against Enrico de Vera by respondent, then the 5th Assistant Provincial Fiscal of Rizal. The accused pleaded not guilty to the offense charged.

After the case was scheduled for trial fourteen (14) times in a span of almost two (2) years from April 3, 1974 up to March 18, 1976, judgment was rendered on June 26, 1976, upon a demurrer to evidence, acquitting the accused Enrico de Vera for failure of the prosecution to establish a prima facie case against him.

As a result of the acquittal of the accused, Alfredo Bautista filed a complaint with the then Ministry (now Department) of Justice sometime in July 1977, claiming that the acquittal of the accused was due to respondent's failure to present the two eyewitnesses to the accident, namely, Meliton Constantino and Sixto de la Cruz.

By way of answer to the charges, respondent, in his memorandum of May 17, 1979, thru counsel, stated:

"The essence of respondent's evidence may be summed up as follows: The alleged eyewitness, Meliton Constantino and Sixto de la Cruz, were not presented by the prosecution because they did not appear at the hearings of the case when they were supposed to testify. This act is borne by the records of Crim. Case No. 8769. It is a standard procedure in Branch XXXVI of the Court of First Instance of Rizal, Makati, Metro Manila, to which said case was assigned for trial and in which the prosecuting fiscal was the respondent, that the parties-litigants and their witnesses present at a certain hearing are required to sign the records that they are personally notified of the next hearing to avoid the sending of further notices or subpoena. As the records show, Meliton Constantino appeared only once and that was on June 21, 1974, when the hearing was postponed to August 26 and 27, 1974. Being present, said witness was required to sign, and in fact did sign, the back portion of the Minutes

for said hearing signifying that he was duly notified of the settings on August 26 and 27, 1974. As disclosed by the records, said Meliton Constantino had not appeared at the any subsequent hearings. Insofar as witness Sixto de la Cruz is concerned, the records show that he never for once attended any hearing of the case. As a matter of-fact, a return of the subpoena (page 60 of the records of Crim. Case No. 8769) dated April 5, 1974, clearly shows that witness De la Cruz 'could not be located' at the address given in the records. Subpoenas sent to both witnesses were either received and not obeyed or were returned with the information that they could not be located at the address indicated therein."

After due investigation, the Secretary of Justice found respondent guilty of the charges and recommended that he be suspended for a period of four (4) months. On respondent's failure to present the two eyewitnesses to the crime, the Justice Secretary, in his letter to the President, dated February 10, 1989, had this to say:

"In support of the administrative complaint against Fiscal Quilatan, Meliton Constantino testified that he saw the accident that resulted in the death of Elviro Bautista but he was never called up to testify in the trial of the case against the driver; that every time he went to court for the trial, complainant, his daughter-in-law and Sixto de la Cruz were his companions; that the trial of the case was repeatedly postponed for various reasons, for instance, that the judge had a conference, that the defense counsel was indisposed, and that, at one time, the mother of the judge died; that he knew the respondent as the lawyer of the complainant; that he saw complainant and a policeman testify in court; that he did not sign the record ('expediente') because, no one ever asked him to do so; and that he failed to attend the trial only once, and he attended all other trials of the case pursuant to court subpoenas.

"Sixto de la Cruz also testified that he lived in Buli, Muntinlupa, Rizal before he transferred to San Antonio, Agos Bato, Camarines Sur, after Christmas of 1974; that he saw how the son of complainant was bumped by a jeepney; that he was not called upon to testify at the trial of the case although he attended the trial 4 or 5 times while he was still residing in Muntinlupa, Rizal, and 7 or 8 times when he was already residing in Camarines Sur; that in attending the trial, he was always with Alfredo Bautista, his wife and Meliton Constantino; that a relative of Antonio Bautista used to fetch him from Bicol for the trial; that he remembered having received subpoenas from the court but could not remember how many; that he came to know Fiscal Quilatan because of the case; that while he did see him many times in the sala of Judge Medialdea, he had no occasion to talk to Fiscal Quilatan; that he could not remember whether he signed the 'expediente'; that he was not required to sign the same after attending the trial; and that whenever the trial was postponed, he was informed by complainant of the next hearing.

"On cross-examination, Sixto de la Cruz testified on the interior appearance of the court room and averred that the judge was usually attired in 'barong tagalog' or 'polo barong'; that the judge is an old man