

THIRD DIVISION

[A.M. No. 00-1398-P (Formerly OCA IPI No. 98-495-P), August 01, 2000]

**ERLINDA N. SY, COMPLAINANT, VS. DANILO P. NORBERTE,
DEPUTY SHERIFF, REGIONAL TRIAL COURT, BRANCH 125,
CALOOCAN CITY, RESPONDENT.**

D E C I S I O N

VITUG, J.:

The case under consideration originated from a letter-complaint, dated 20 July 1998, filed by Erlinda N. Sy against Danilo P. Norberte, Sheriff IV, Branch 125, of the Regional Trial Court ("RTC") of Kalookan City. Sy was the plaintiff in Civil Case No. C-18354 ("Erlinda N. Sy vs. Spouses Carlos and Antonietta Galvez") for a sum of money with a prayer for preliminary attachment. The case was raffled to Branch 122.

According to complainant Sy, respondent Sheriff, together with Jocelyn N. Lucas and Erlinda A. Bantug, both with RTC Branch 122, tipped off Galvez regarding the issuance of a writ of preliminary attachment in Civil Case No. C-18354. Galvez promptly removed all personal property from her place of business/residence at 104 Sampalukan Street, Kalookan City, in order to avoid attachment. Complainant saw respondent Sheriff actively assisting and helping in the removal of the property, which began at eight o'clock in the evening of 29 June 1998 and was completed in the afternoon of the following day, and in thereafter padlocking the place. The next day, she reported the matter to her lawyer and, on 01 July 1998, to Sheriff Ronaldo Morada of Branch 122. The latter forthwith left to serve the writ and, sure enough, found the place empty and padlocked.

In his answer to the complaint, respondent Sheriff countered that the charges against him were "completely false, prevaricated, concocted, contrived, unfounded and malicious." Admitting that Jocelyn Norberte Lucas was her aunt, he claimed that he seldom saw her and had not, in fact, talked to her for quite some time. He denied knowing the spouses Carlos and Antonietta Galvez. He said that on 29 June 1998, from 5:30 in the afternoon to 1:00 in the morning of the following day, he was with Attorney Davidson Sarmiento and some PAO lawyers at Cafe Caimito in 9th Avenue, Kalookan City, the next day being a special public holiday. He then went home where he spent the whole day. Respondent submitted an affidavit, dated 27 July 1998, executed by Attorney Sarmiento to bolster his statement. Asserting that he had been a Sheriff for 27 years, and his wife Cleofe, for a like period, had been with the Office of the Court Administrator, he certainly would not jeopardize his position, as well as his wife's integrity and reputation, by any wrongdoing.

In its resolution of 21 April 1999, the Court referred the case to Executive Judge Bayani S. Rivera of RTC, Kalookan City, Branch 129, for investigation, report and recommendation.

In his report and recommendation, following an investigation, Executive Judge Rivera submitted his findings:

"Ranged against the positive identification of respondent not only by complainant herself but by 2 other witnesses (P01 Luis Coderes & Mrs. Susan Nunez) as the one who assisted and helped Antonietta Galvez in the removal of her personal properties from her residence and business shop and in the transfer thereof to other places to defeat the forthcoming implementation of the writ of preliminary attachment in Civil Case No. C-18354, I cannot see how respondent's defense of alibi could help his claim to innocence. It is a matter of jurisprudence that aside from being inherently weak and easy to fabricate, alibi crumbles in the face of positive identification of the culprit by prosecution witnesses (People vs. Narca, 275 SCRA 696). Withal, for alibi to prosper, it is indispensable that there be credible and tangible proof of physical impossibility for the respondent to be at the scene of the offense (People vs. Salvatierra, 276 SCRA 55).

"In the instant administrative case, the witness who corroborated respondent's claim of alibi was Atty. Davidson Sarmiento who in effect indicated that it was 'no big deal' for family men like him and respondent to be in a drinking spree from 5:30 p.m. to 1:00 a.m. of the next day. I do not mean to cast aspersion on government personnel who indulge themselves in such bacchanalian orgy after office hours. After all, it is their time that they squander in ephemeral and unproductive activities. Even so, the short-lived entertainment which respondent and Atty. Sarmiento apparently take matter-of-factly touches on their sense of values and ultimately on their credibility. Simply stated, respondent and Atty. Sarmiento apparently believe that there was nothing wrong in what they allegedly did, more so in the instant case where it could be, as it was actually utilized, as an alibi, albeit unavailing.

"Even assuming in gratia argumenti that respondent and Atty. Sarmiento were in fact at Cafe Caimito from 5:30 p.m. to 1:00 a.m. of the next morning, still the defense of alibi in this case is futile. The restaurant-cocktail lounge on 9th Avenue is just a few minutes ride to Sampalukan St., Caloocan City where the removal of properties was done on the night of June 29, 1998. Ergo, the physical impossibility required in People vs. Salvatierra, supra, finds no application to this case.

"Another incredible testimonial evidence in this case is the sur-rebuttal testimony of Mr. Noel Mapue. This witness admitted that in order to help Antonietta Galvez defeat the impending implementation of a writ of preliminary attachment against her properties, he opened his warehouse on Dona Rita St., Caloocan City on the night of June 29, 1998 so that Galvez and her companions could transfer her knock-down lumber to said warehouse. If a person has no qualm or scruple about helping another violate a lawful court process, how could his testimony that he did not see respondent during the removal and transfer of Antonietta Galvez' properties be treated differently. A person who admittedly violates the law is certainly an incredible witness. His flimsy explanation that he wanted to help Galvez in hiding her properties because she is 'his wife's friend' may well apply to his attempt to help respondent in this