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# FIRST DIVISION

# [ A.M. No. MTJ-13-1823, March 19, 2014 ]

## P/SR. INSP. TEDDY M. ROSQUETA, COMPLAINANT, VS. JUDGE JONATHAN A. ASUNCION, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, LAOAG CITY, RESPONDENT.

## D E C I S I O N

**BERSAMIN, J.:**

The members of the Bench are one of the pillars of our justice system. They must strive to observe the highest standards of integrity and probity in their professional and personal lives. The public has the right to expect an unimpeachable bearing from them. This expectation is not limited to their judgments, but extends to their public demeanor, and should stand to the closest of scrutiny. They deserve to be condignly sanctioned otherwise.

### Antecedents

On July 2, 2008, complainant Police Sr. Insp. Teddy M. Rosqueta, then Deputy Chief of Police of Bacarra, Ilocos Norte, filed an affidavit-complaint charging respondent Presiding Judge Jonathan A. Asuncion of the Municipal Trial Court in Cities (MTCC), Branch 2, in Laoag City, Ilocos Norte with grave misconduct and violation of the *New Code of Judicial Conduct*, specifically Canon 2, Rule 2.01.[1]

The antecedents of the charge follow.

At about 4:30 pm of April 25, 2008, Chief Insp. Jericho Baldeo, the Chief of Police of Bacarra, received a report about persons armed with firearms in the house of one Alex Asuncion. Chief Insp. Baldeo dispatched Sr. Insp. Rosqueta and other members of the Bacarra Municipal Police Station to verify the report. Sr. Insp. Rosqueta and his team proceeded to the area, where they found two shirtless males with guns tucked on their waists and immediately apprehended them for illegally possessing firearms, magazines and ammunitions. The arrestees were identified as Fidel Refuerzo and Rex Dalere. The firearm that became the subject of this administrative charge – identified as a DAEWOO 9mm pistol bearing serial number BA 005280 – was seized from Refuerzo.[2]

Based on Sr. Insp. Rosqueta's investigation, Refuerzo, a resident of Barangay 15, Bacarra, Ilocos Norte, worked as an associate/bodyguard of Judge Asuncion.[3] Upon verification at the Ilocos Norte Police Provincial Office of the Office of the Firearms and Explosives, Security Agencies and Guards Supervision (FESAGS), Refuerzo was found to be not listed as a registered or licensed holder of any kind and caliber of firearm.[4]

The investigation revealed that the firearm in question had been previously seized

from the possession of one Joseph Canlas during an illegal drugs buy-bust operation conducted on August 23, 2005 in Darayday, Laoag City, Ilocos Norte; and that Sr. Insp. Rosqueta had led the buy-bust operation and had seen to the filing on August 24, 2005 of criminal cases charging Canlas with illegal possession of dangerous drugs in violation of Republic Act No 9165 (*Comprehensive Dangerous Drugs Act*), and with the illegal possession of a firearm and ammunition in violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294.

The criminal case for illegal possession of firearms, docketed as Criminal Case No. 34412, was assigned to Branch 2 where Judge Asuncion presided.[5] However, Canlas moved to quash the information in Criminal Case No. 34412 on the ground that under Republic Act No. 8294, the illegal possession of firearms and ammunitions could not be prosecuted as a separate offense if the firearm and ammunitions had been seized during the commission of the other crime of illegal possession of dangerous drugs.[6]

On September 12, 2005, pending the resolution of Canlas' motion to quash, Sr. Insp. Rosqueta formally moved for the release of the DAEWOO 9mm pistol bearing serial number BA 005280 "for ballistic and cross matching examination with some other crimes committed wherein a caliber 9mm pistol was used."[7] In his order dated September 13, 2005,[8] Judge Asuncion denied Sr. Insp. Rosqueta's motion on the ground that it lacked the conformity of the public prosecutor.

On October 5, 2005, Judge Asuncion granted the motion to quash and dismissed Criminal Case No. 34412.[9]

On January 16, 2006, then Assistant City Prosecutor Myra Sheila Nalupta-Barba filed a motion seeking the turnover of the DAEWOO 9mm pistol bearing serial number BA 005280 to the Laoag City Prosecutor's Office to enable said office to act upon the request of the PNP Provincial Office to include the firearm in the list of PNP properties for the use of PNP personnel.[10] In his order dated April 11, 2006, however, Judge Asuncion denied the motion for lack of merit.[11]

Upon the recovery of the firearm some two years after the dismissal of Criminal Case No. 34412, Sr. Insp. Rosqueta insisted that Judge Asuncion should have turned over the firearm to the PNP to accord with Supreme Court (SC) Circular No. 47-98, to wit:

> 7. Firearms being used as evidence in courts will only be turned-in to FEO (now Firearms and Explosives Division) upon the termination of the cases or when it is no longer needed as evidence.
>
> Strict compliance herewith is enjoined.

Sr. Insp. Rosqueta also contended that Judge Asuncion committed serious misconduct because he had shown malicious interest in the firearm by allowing his bodyguard to take possession of the firearm.

In his comment dated October 24, 2008,[12] Judge Asuncion maintained that he did not commit any indiscretion in denying the motions to withdraw the exhibits in Criminal Case No. 34412; that SC Circular No. 47-98 did not apply because the

information in Criminal Case No. 34412 had been quashed, leaving the firearm as unoffered evidence; that the reasons proffered by Sr. Insp. Rosqueta and the Office of the City Prosecutor were unavailing, because the firearm could neither be forfeited in favor of the Government nor released to the Firearms and Explosives Division if the information, being void, did not validly charge Canlas with the alleged crime; that the firearm still impliedly belonged to Canlas; and that Sr. Insp. Rosqueta had usurped the authority of his superior officer and the City Prosecutor by taking it upon himself to file the motion to withdraw the firearm without the consent of either official.

Judge Asuncion recalled that two years after the quashal of the information against Canlas in Criminal Case No. 34412, the clerk of court presented the firearm to him and inquired about what should be done to dispose it; that he then contemplated transferring the custody of the firearm to the PNP Provincial Office, and accordingly instructed the clerk of court to put the firearm in the trunk of his car;[13] that he planned to discuss the transfer with the PNP Provincial Director on April 21, 2008 before issuing the order corresponding thereto; that he meanwhile fell ill with acute bronchitis and underwent medical treatment in the period of April 21-30, 2008; that when he accompanied his daughter to enroll in Baguio City on April 25, 2008, he asked his brother-in-law, Randy Esperanza, to bring the car to a mechanic, but overlooked that the firearm was inside the trunk of the car; that he tried to call and tell Esperanza about the firearm but he could not reach the latter; that he called Refuerzo to have him look for Esperanza in the motor shop in order to instruct him to give the firearm to his sister for safekeeping; that unable to locate Esperanza, Refuerzo himself took the firearm from the car with the intention of delivering it to the sister of Esperanza; and that on his way home from the motor shop, Refuerzo dropped by his (Judge Asuncion) house, and it was there where the policemen frisked him allegedly for no reason at all and seized the firearm.[14]

In the Resolution promulgated on August 4, 2010,[15] the Court referred the administrative complaint to Executive Judge Conrado A. Ragucos of the Regional Trial Court in Laoag City for investigation, report, and recommendation.

Executive Judge Ragucos submitted his Investigation Report dated January 11, 2011, wherein he rendered his findings and observations, as follows:

1. Criminal Case No. 34412, People of the Philippines vs. Joseph Canlas was dismissed on technicality. The firearm subject of the Information was not yet offered as evidence, hence, the prosecution was deemed to be still in custody of the firearm. It was with the Court allegedly for safe keeping. By denying the Motion of the Prosecution to Withdraw the Exhibit, the respondent judge appears to have shown undue interest.

2. When the respondent Judge and the Clerk of Court discussed about what to do with the firearm, it was clear that the court does not need it anymore. There was no need to discuss it with the PNP Provincial Director. All that the respondent judge should have done was to instruct the Clerk of Court to forward it to the Firearms and Explosives unit of the PNP through the Provincial Director in accordance with SC Circular No. 47-98. The respondent judge did

not do this. Was it because the firearm was no longer in the custody of the court?

3. There was no need for the respondent judge to bring home the firearm. It had been safe in the locker of the court for two (2) years. It was the bringing home of the firearm by the respondent Judge which was the mainspring of confiscation of the firearm that seriously tainted the integrity of the judiciary.

4. In fairness to the respondent judge, there is no substantial evidence that he delivered the firearm to Fidel Refuerzo and that the latter was his bodyguard.[16]

Executive Judge Ragucos recommended that Judge Asuncion be held liable for simple misconduct and simple neglect of duty; and that a fine be imposed upon him at the Court's discretion.[17]

The Office of the Court Administrator (OCA) adopted the findings of Executive Judge Ragucos. It noted the two opportunities in which Judge Asuncion could have turned over the firearm long after Criminal Case No. 34412 had been dismissed; that by denying the motions to withdraw the firearm as an exhibit, "it cannot be gainsaid that he took a special interest in the subject firearm;"[18] and that it was incomprehensible that Judge Asuncion supposedly brought the firearm home seven days prior to its seizure although it had lain undisturbed in the custody of the court for nearly two years.

The OCA recommended the following:

1. This case be TREATED as a regular administrative matter;

2. **Judge Jonathan A. Asuncion**, Branch 2, Municipal Trial Court in Cities, Laoag City, Ilocos Norte, be ADJUDGED GUILTY of gross misconduct constituting a violation of the Code of Judicial Conduct, and a FINE of Twenty-One Thousand Pesos (Php21,000.00) be IMPOSED upon him with a stern warning that a repetition of the same or similar acts will be dealt with more severely; and

3. Judge Asuncion be DIRECTED to turn-over within fifteen (15) days from notice the handgun (cal. 9mm pistol with serial number BA 005280) subject matter of this case to the Philippine National Police in accordance with Circular No. 47-98, unless the same had already been previously done.[19]

**Issues**

Did Judge Asuncion take the firearm and give it to Refuerzo? If so, did he violate the *New Code of Judicial Conduct* as to make him guilty of gross misconduct?

**Ruling**

After due consideration of the findings and evaluation of Executive Judge Ragucos, which the OCA adopted, we find that Judge Asuncion took the firearm and gave it to

Refuerzo in violation of the *New Code of Judicial Conduct*. Accordingly, we pronounce him guilty of gross misconduct.

**1.**

**Explanations of Judge Asuncion were not entitled to credence**

The firearm, then in the custody of Branch 2 of the MTCC, would have been evidence in Criminal Case No. 34412 to prove the charge of illegal possession of a firearm and its ammunitions, but its being offered as evidence did not ultimately come to pass because of the intervening quashal of the information on October 5, 2005 upon the motion of Canlas. Being unoffered evidence, the firearm had to be properly disposed of thereafter either by the Office of the City Prosecutor of Laoag City, whose evidence the firearm was supposed to be offered in court, or by the PNP, the agency expressly authorized by law to take custody of the firearm. Under SC Circular 47-98, *supra*, which was a substantial reiteration of SC Circular 2 dated May 13, 1983,[20] Judge Asuncion and his clerk of court in Branch 2 had the ministerial duty and the primary responsibility to turn over the firearm to the proper office of the PNP (*i.e.*, FESAGS) because it would no longer be needed as evidence upon the dismissal of Criminal Case No. 34412. A ministerial duty or function is one that an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of judgment upon the propriety or impropriety of the act to be done.[21] However, on April 11, 2006, Judge Asuncion denied the motion filed on January 16, 2006 by the Office of the City Prosecutor of Laoag City seeking the turnover of the firearm to the PNP.

The actuations of Judge Asuncion in relation to the firearm conceded that the dismissal of Criminal Case No. 34412 did not invest the rightful custody of the firearm either in him or his court. Yet, the established facts and circumstances show that he still appropriated the firearm and given it to Refuerzo, his bodyguard. His appropriation of the firearm would have gone undiscovered had not the team led by Sr. Insp. Rosqueta seized it from Refuerzo, who had nothing to do with its proper custody. It then became incumbent upon Judge Asuncion to explain how the firearm landed in the possession of Refuerzo.

In his comment, Judge Asuncion sought to explain by narrating that he had instructed the clerk of court to put the firearm in the trunk of his car because he would take up the turnover of the firearm personally with the PNP Provincial Director on April 21, 2008. Such explanation would justify why the firearm had been taken out of the court's custody. The explanation cannot command credence, however, because it was blatantly implausible. For one, even assuming that Judge Asuncion would be directly taking up the turnover of the firearm with the PNP Provincial Director, we cannot understand why he had to have the physical possession of the firearm to do so. Also, why Judge Asuncion would himself take the matter up with the PNP Provincial Director was puzzling considering that all he needed to do as the judge was to direct the clerk of court to deliver the firearm to the custody of the PNP Provincial Office, or simply to require a representative of the PNP Provincial Office to collect the firearm from the clerk of court. Either alternative would have substantially complied with the directive of SC Circular 47-98 regarding the firearm.

Judge Asuncion would further explain how the firearm landed in the possession of