

EN BANC

[A.M. No. P-11-3019, March 20, 2012]

SHERYLL C. DELA CRUZ, COMPLAINANT, VS. PAMELA P. MALUNAO, CLERK III, REGIONAL TRIAL COURT, BRANCH 28, BAYOMBONG, NUEVA VIZCAYA, RESPONDENT.

DECISION

PER CURIAM:

This administrative matter originated from a criminal complaint (I.S. No. 5519-E-2008) filed by complainant Sheryll C. Dela Cruz (Dela Cruz) against respondent Pamela P. Malunao (Malunao), Clerk III of Branch 28 of the Regional Trial Court of Bayombong, Nueva Vizcaya (Branch 28) for the crime of robbery with extortion. The Office of the Provincial Prosecutor of Bayombong, Nueva Vizcaya forwarded the records of the case to the Supreme Court since Malunao is a trial court employee under the exclusive administrative supervision of the Supreme Court.^[1] The case was then docketed as A.M. OCA I.P.I. No. 08-2972-P with the Office of the Court Administrator.

The report of the National Bureau of Investigation dated 8 May 2008 summarizes the facts of the case as follows:

Investigation disclosed that on 06 May 2008, Subject PAMELA MALUNAO y PASCUA (Subject Malunao for brevity) through several calls and text messages informed Complainant SHERYLL DELA CRUZ y CEBALLOS (Complainant Dela Cruz for brevity) that ALAY KAPWA Cooperative had given bribe money in the amount of TWENTY THOUSAND PESOS (PHP20,000.00) to HONORABLE JUDGE FERNANDO F. FLOR JR. (JUDGE FLOR for brevity), Regional Trial Court, Branch 29, Bayombong, Nueva Vizcaya through an unidentified individual in exchange of fixing the case in favor of the said cooperative against ERNESTO ROXAS, a business partner of complainant.

Subject Malunao further informed Complainant DELA CRUZ that JUDGE FLOR was willing to return the money to ALAY KAPWA Cooperative if the latter will give THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) to Judge Flor through the former (Subject Malunao). Subject Malunao also intimidated Complainant Dela Cruz that if the latter will not give the said amount to Judge Flor, the said judge will rule in favor of ALAY KAPWA Cooperative.

Intimidated of the heavy damage that will arise from losing the case against ALAY KAPWA, Complainant Dela Cruz agreed to pay the amount of THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) but in installment

basis. Subject Malunao demanded the amount of FIFTEEN THOUSAND PESOS (PHP15,000.00) to be paid on 2:00PM, 08 May 2008.

At about 10:00AM 08 May 2008, the Complainant, wanting to confirm whether or not the transaction brokered by Subject Malunao will push through, personally approached Judge Flor at the Hall of Justice parking lot. However, when asked by Complainant Dela Cruz regarding the amount of THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) that Subject Malunao asked of her, Judge Flor denied any knowledge of said transaction.

Judge Flor referred Complainant Dela Cruz to the NBI-Bayombong District Office (NBI-BAYDO) in order for the latter to file the necessary complaint against the Subject Malunao.

At about 10:30AM, Judge Flor arrived at the NBI-BAYDO to make sure that Complainant Dela Cruz had already filed a complaint before this office and that an entrapment operation will be later on set up at 2:00PM 08 May 2008.

At about 1:00PM 08 May 2008, the operatives of the NBI-BAYDO proceeded to No. 45 Espino St., Brgy. Quirino, Poblacion South, Solano, Nueva Vizcaya, complainant's residence, to conduct an entrapment operation against Subject Malunao.

Upon Subject Malunao's receipt of the marked money, the entrapment operation was announced and Subject Malunao was arrested and informed of her constitutional rights.

Subject Malunao was brought to the NBI-BAYDO where she was booked, photographed and fingerprinted.

In support of our recommendation, we are submitting the following pieces of evidence, to wit:

1. Complaint Sheet;
2. Sinumpaang Salaysay ni Sheryll Dela Cruz y CEBALLOS;
3. Affidavit of Arrest;
4. Booking Sheet and Arrest Report;
5. Photocopy of the marked money
6. others to follow.^[2]

On 23 May 2008, Malunao filed an Affidavit^[3] denying the accusations against her. Malunao claimed that Dela Cruz framed her into making it appear that she committed the offense for which she is now being charged. Malunao claims that she personally knows Dela Cruz as an employee of the Rural Bank of Solano and a businesswoman connected with ER Agro-Trading.^[4] Malunao and her mother-in-law purchased piglets from ER Agro-Trading and learned that Dela Cruz was engaged in the business of lending money.^[5] When Malunao inquired from Dela Cruz about a

loan, Dela Cruz asked how much she needed.^[6] Malunao told Dela Cruz she needed P15,000.00 to pay for the tuition fee of her daughter.^[7] When Malunao followed up the loan, Dela Cruz instructed her to come to her house on 8 May 2008 at 2:00 p.m.^[8] When Malunao arrived, Dela Cruz invited Malunao inside the house and offered her a seat in the living room. Dela Cruz left the living room to get the money, and when she returned, gave Malunao P15,000.00.^[9] After receiving the money, Malunao asked for the promissory note she needed to sign evidencing the loan.^[10] However, a tall woman emerged from the kitchen and took her bag, announced “NBI ito.” At the same time, two men entered the house, opened and took pictures of the contents of her bag, and arrested Malunao.^[11] Malunao was then brought to the Office of the Provincial Prosecutor of Nueva Vizcaya where she was charged.^[12]

Malunao further claims that Dela Cruz knows her as employed in Branch 28 with Judge Flor as presiding judge, and not in Branch 29, as stated in Dela Cruz’s Sinumpaang Salaysay.^[13] In addition, Dela Cruz knows that Malunao has been suspended from office since July 2007, long before Civil Case No. 6875 entitled *Alay Kapwa Multi-Purpose Cooperative, Inc. v. Engr. Nestor A. Gonzaga and Ernesto Roxas (E.R. Agro-Trading)* was filed and raffled on 24 January 2008 to Branch 28.^[14] Malunao further emphasizes that from the time she was suspended, she has not gone inside the office of Branch 28.^[15] For these reasons, Malunao denies the accusations against her and claims she was framed.^[16]

On 14 August 2008, the Office of the Provincial Prosecutor issued a Joint-Resolution forwarding the records of the case to the Supreme Court since Malunao is a trial court employee under the exclusive administrative supervision of the Supreme Court.^[17]

On 17 August 2009, the Court referred the instant administrative complaint to Executive Judge Merianthe Pacita M. Zuraek, Branch 29, Bayombong, Nueva Vizcaya for her investigation, report and recommendation.^[18]

On 12 April 2011, Executive Judge Zuraek submitted her Report/Recommendation^[19] recommending the dismissal of the case for clear lack of evidence, stating:

In the instant case, complainant Sheryll C. Dela Cruz testified on direct examination on December 3, 2009. Instead of returning for the continuation of her direct examination, she filed on August 16, 2010 a manifestation expressing her desire not to pursue her case on account of her sensitive medical condition, which to her, affects her capability to actively prosecute her complaint. According to her, she would not object to the eventual dismissal of the case for lack of evidence arising from her inability to testify and produce witnesses and other evidence.

Having sensed that complainant was merely having second thoughts and was finally ready to testify, since she testified as a witness in OCA IPI No. 08-2971 entitled Judge Fernando F. Flor, Jr. versus Pamela Malunao, the undersigned set the instant case for hearing on January 20, 2011 for her

to continue her direct examination. This was resorted to since the two (2) cases arose from the same transaction, which is the extortion of money from complainant. However, complainant chose not to appear.

To the mind of the undersigned, her failure to appear is a clear affirmation / confirmation of her lack of interest to prosecute her case.

x x x

In so far as the complainant is concerned, she was heard when she testified. However, the same is not true with the defendant, who because of the decision of the complainant not to appear any more, was not able to controvert her testimony by cross-examining her.

Since the testimony of the complainant was not covered by cross-examination, which is a fundamental and essential right of the respondent, the undersigned orders the evidence of complainant, both testimonial and documentary, expunged from the records. Moreover, documentary evidence to be appreciated should be formally offered in evidence. The complainant of her own volition, chose not to complete her presentation of evidence, which explains why there was no such formal offer. The rule is, evidence not offered is no evidence at all. Thus, to give it weight would be in violation of the defendant's right to due process and fair trial.

There being no evidence, the undersigned has nothing to evaluate vis a vis the facts of the case. As a result, it has no power to make conclusions of fact because it has not heard both parties.^[20]

The Office of the Court Administrator (OCA), on the other hand, in its Memorandum dated 5 October 2011, recommended that: (a) the matter be re-docketed as a regular administrative matter; (b) Malunao be adjudged guilty of grave misconduct; and (c) the accrued leave credits of Malunao be forfeited, in lieu of dismissal from the service, should OCA's recommendation in A.M. OCA IPI No. 08-2974-P to dismiss her from the service be adopted by the Court.^[21]

The OCA recommended the dismissal of Malunao with forfeiture of retirement benefits and accrued leave credits, contrary to the recommendation of the Executive Judge Zuraek, because technical rules of procedure and evidence, the legal basis of Executive Judge Zuraek's recommendation, should not be strictly applied in administrative proceedings.^[22] Although Dela Cruz was not able to complete the presentation of her evidence before Executive Judge Zuraek, Dela Cruz's Sinumpaang Salaysay, the joint affidavit of arrest executed by the NBI agents, the Booking Sheet and Arrest Report, the photocopy of the marked money, the Complaint Sheet, and the photographs of Malunao entering Dela Cruz's house and the contents of Malunao's bag after receipt of the money, can all be considered in the appreciation of evidence to determine if there is substantial evidence to show that Malunao committed the acts alleged in the administrative complaint.^[23] Moreover, Malunao submitted an Affidavit contradicting the allegations of Dela Cruz.^[24]