

THIRD DIVISION

[A.M. No. RTJ-10-2246 (formerly A.M. OCA I.P.I. No. 09-3219-RTJ), June 01, 2011]

ATTY. RANDY P. BARENG, COMPLAINANT, VS. JUDGE ZENAIDA R. DAGUNA, REGIONAL TRIAL COURT, BRANCH 19, MANILA, RESPONDENT.

R E S O L U T I O N

BRION, J.:

Before us is the Complaint-Affidavit ^[1] filed by Atty. Randy P. Bareng, on July 8, 2009, against Presiding Judge Zenaida Daguna of the Regional Trial Court (RTC), Branch 19, Manila. Atty. Bareng accused Judge Daguna of *gross misconduct and manifest abuse of functions of her office*.

The Antecedents

Atty. Bareng is the counsel of Romulo Awingan, one of the accused in Criminal Case Nos. 05-237561 and 05-237562, for double murder, entitled "*People of the Philippines v. Licerio Antiporda, Jr., Lloyd Antiporda, Romulo Awingan and Richard Mecate*." These two murder cases were consolidated before the RTC, Manila, Branch 29 presided by Judge Cielito M. Grulla. ^[2] On October 26, 2005, Judge Grulla issued an Order ^[3] granting the public prosecutor's motion to withdraw the informations filed based on the findings of the Secretary of Justice. ^[4]

The private complainant filed a *Motion for Reconsideration, Inhibition and Transfer Cases to Regular Court*. Judge Grulla voluntarily inhibited herself from the case, and did not resolve the motion for reconsideration and the motion to transfer the cases. The consolidated cases were subsequently re-raffled to the RTC, Manila, Branch 19, presided by Judge Daguna.

In her December 9, 2005 Resolution, ^[5] Judge Daguna granted the private complainant's motion for reconsideration and set aside Judge Grulla's October 26, 2005 Order. Accused Awingan, through Atty. Bareng, filed a motion for reconsideration. Judge Daguna denied the motion in her Order of February 3, 2006. ^[6] Awingan, thereafter, filed a petition for *certiorari* and prohibition before the Court of Appeals (CA), alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Daguna.

During the pendency of the CA petition, Judge Daguna issued warrants of arrest against all the accused.

The CA granted Awingan's petition for *certiorari* and prohibition in its November 10, 2006 Decision. ^[7] The CA found that Judge Daguna acted with grave abuse of

discretion because she “arbitrarily and whimsically disregarded the guidelines for acting on the People’s *motion to withdraw informations* and practiced unreasonable and inexplicable selectivity by not considering *all* the records available to her in order to make her independent assessment and evaluation of the merits of the cases before her.” [8] The CA nullified her two resolutions, ordered her to grant the motion to withdraw the informations filed, and prohibited her from further proceeding with Criminal Case Nos. 05-237561-62.

Since the warrants of arrest against all the accused were still in force, Atty. Bareng filed before the RTC a Manifestation and Motion, on November 15, 2006, [9] to inform the RTC of the CA Decision and to ask for its immediate implementation. He attached a certified copy of the CA Decision.

Judge Daguna denied the motion for lack of merit in her December 4, 2006 Order. [10] She pointed out that the Rules of Court provides that only final and executory judgments may be executed. She noted that the required entry of judgment, to show that the decision was executory, was not submitted with the motion, and that the record of the case showed that the private complainant filed a motion for reconsideration before the CA. Judge Daguna also ordered Atty. Bareng “to SHOW CAUSE within ten (10) days from receipt why he should not be held in contempt of court or otherwise dealt with administratively for deliberately attempting to mislead the Court.” [11]

Atty. Bareng moved for the reconsideration of the Order, [12] but Judge Daguna turned the motion down in her Order of January 3, 2007. [13] She found Atty. Bareng guilty of contempt of court and penalized him with a fine of P1,000.00, and warned him against the repetition of the same offense.

Atty. Bareng moved for the reconsideration of this Order [14] and subsequently filed a supplement to this motion on March 5, 2007. [15] When the RTC failed to immediately resolve the motion, Atty. Bareng filed his first motion to resolve, dated January 2, 2008. [16] On February 4, 2008, he filed his manifestation and second motion to resolve. [17]

In the Order [18] issued, Judge Daguna stated that she resolved Atty. Bareng’s motion for reconsideration on July 31, 2007, but her Order might not have been released; hence, she directed that the Order be reprinted and the parties be furnished with copies. Since Judge Daguna denied his motion for reconsideration for lack of merit, [19] Atty. Bareng filed his notice of appeal [20] on May 20, 2008, after receiving his copy of the order on May 6, 2008. [21]

On July 8, 2009, Atty. Bareng filed with the Office of the Court Administrator (OCA) his complaint-affidavit, [22] charging Judge Daguna with gross misconduct and manifest abuse of functions of her office, based on the following allegations:

1. That Judge Daguna, in her December 4, 2006 Order, insinuated that there was “pecuniary estimation” attached to the manifestation and motion filed by Atty. Bareng; this, according to Atty. Bareng, was unfair and tainted with malice;

2. That despite Atty. Bareng's explanation, Judge Daguna found him guilty of contempt of court;
3. That he filed a motion for reconsideration and supplement to the motion for reconsideration;
4. That after the lapse of almost one year, he filed his first motion to resolve;
5. That after more than one month, he filed a manifestation and second motion to resolve;
6. That Judge Daguna claimed that she had resolved the motion for reconsideration as early as July 31, 2007 but apparently the order had not been released; and
7. That he filed a notice of appeal on May 20, 2008 but Judge Daguna had not acted on the appeal despite his motion to resolve and/or elevate appeal dated June 19, 2009.

In her July 31, 2009 Comment, [23] Judge Daguna denied that the delays attributed to her were her fault. She blamed her staff for the delay. Thus:

7. As regards paragraph 19 to 22, it was a good thing that the good lawyer, herein complainant, filed a "Motion To Resolve" thereby getting the attention of the Court on the purely inadvertent failure on the part of the court staff to mail the Order dated July 31, 2007. At any rate, the same has been settled by reprinting the same and had it released by mail to the parties. The situation in the office then has to be taken into consideration as a backgrounder of the inadvertence, with this office being understaffed as the Clerk in-charge of the criminal cases had gone AWOL, and the Process Server, who pitches in during the absence of the clerks for the typing of notices and mailing was detailed to the Office of the Clerk of Court. So it was one of the court stenographers who assumed the clerical duties of typing the notices and mailing during his free time as stenographer. The Order dated July 31, 2007 (Annex "6") was duly attached to the record but the staff could not explain why the copies thereof and the notices were missing for which reason the Court hastily issued the Order dated March 14, 2008 (Annex "7") after investigating the staff over the lapse averted to. Meanwhile, the respondent had started to be ailing and was slowed down by her ailment but it was never a lapse committed by the respondent but admittedly a lapse on the part of the court staff[.]

She also explained the delay in forwarding the records to the CA, as follows:

8. The "Notice of Appeal" interposed by Atty. Randy P. Bareng to the Order of this Court convicting him for contempt of Court and subjecting him to a fine of P1,000.00 has been duly acted upon by the Court by readily issuing an Order dated May 21, 2008 (Annex

"8") giving due course thereto with a directive addressed to the staff to forward the documents appurtenant to the contempt proceedings. However[,] to her great dismay, she learned of this another lapse committed by the staff after she received a copy of this administrative complaint that the said Order has not been released on time and has not even been mailed to the parties. Worse, it appears from the record that the appurtenant documents were only forwarded to the Court of Appeals on June 23, 2009 as shown in the Transmittal Letter (Annex "9") after the herein complainant filed a "Motion To Resolve And /Or Elevate Appeal". The Branch Clerk explained that it was pure oversight on his part considering that everything seemed regular on the record as the proceedings in these cases are suspended due to the incidents pending for resolution in the appellate courts. But he failed to remember that there was an order that was to be complied with relative to the contempt proceedings particularly the transmittal of the documents on appeal. He honestly thought it has already been taken care of. The Clerk in-charge for criminal cases in turn said that he did not bother to have the Order (dated May 21, 2008) mailed to the parties as he thought that there was no need for it since the directive of the Court was only to forward the appurtenant record/documents to the Court of Appeals. Yet he failed to forward the same on time as the thought was sidelined by other equally important duties he had to attend to and admitted that his attention was called upon receipt of the "Motion To Resolve and/or Elevate Appeal. This Clerk in-charge of criminal cases is a new employee and understandably has failed to grasp the extent of his duties as such;

9. The Branch Clerk did not bother to inform me of the "Motion to Resolve and/or Elevate Appeal" filed by Atty. Bareng allegedly to spare me of the anxieties that the matter would cause in deference to my present health condition, as it inevitably has now caused my blood pressure to shoot up.

While the administrative case was pending, Judge Daguna applied for disability retirement in late 2009. She was allowed to retire, but because of the two (2) pending administrative cases against her, the amount of P50,000.00 was withheld from her retirement benefits to answer for whatever adverse decision the Court may later impose on her.

The OCA's Report/Recommendation

In its submission dated February 24, 2010, [24] the OCA found no evidence to sustain the charges of gross misconduct and manifest abuse of functions of her office against Judge Daguna. The OCA, however, found Judge Daguna guilty of gross inefficiency. The OCA's report stated: