

EN BANC

[A.M. No. RTJ-04-1884 (Formerly OCA IPI No. 03-1806-RTJ), February 22, 2008]

SILAS Y. CAÑADA, Complainant, vs. ILDEFONSO B. SUERTE, former Presiding Judge, Regional Trial Court, Barili, Cebu City, Branch 60, Respondent.

RESOLUTION

PER CURIAM

On July 11, 2003, the Office of the Court Administrator (OCA) received the complaint^[1] of Silas Y. Cañada against respondent Ildefonso B. Suerte, former presiding judge of the Regional Trial Court (RTC), Barili, Cebu City, Branch 60. Respondent was charged with grave abuse of authority, grave misconduct, grave coercion, dishonesty, harassment, oppression and violation of Article 215 of the Revised Penal Code (RPC) and the Canons of Judicial Ethics.^[2]

Complainant alleged that he and respondent were neighbors in Badian, Cebu. Sometime in early 2002, respondent volunteered to act as an agent-broker to sell complainant's beach lot in Barangay Bato, Badian, Cebu. They agreed that the selling price would be P1,600,000 and that respondent would receive P600,000 as commission.

In July 2002, respondent informed complainant that he had a foreign buyer but insisted on a commission of P1,000,000 with the balance of P600,000 for the complainant. The latter, protesting, did not agree to the proposed new arrangement and refused to sign the deed of sale prepared by respondent. The latter was furious and told complainant in the Cebuano dialect:

Silas, wa ka ba masayod nga huwes ako sa RTC, Branch 60 nga imo lang tagaan ug P600,000.00 sa kantidad nga halin sa yuta nga P1.6M? Ikaw nasayod nga ako makasugo paghikaw sa usa ka tawo sa iyang mga butang pagpasulod ngadto sa presohan ug pagpabitay sa usa ka tawo ngadto sa iyang kamatayon. Dinhi sa yuta ako ray makahimo. Kon ikaw dunay kaso unya sa akong husgado siguro gyod ikaw mabilanggo. (Silas, do you know that I am the judge in RTC Branch 60 and you will only give me a mere P600,000.00 as commission for the sale of your land for P1.6M? You know I can deprive a man of his property, [send] him to jail and have him executed either by hanging, electrocution or [by] lethal injection).^[3]

Despite the fact that the sale did not proceed, respondent demanded P200,000 from complainant for his effort in finding a buyer. Complainant was forced to give him P100,000.^[4] After the incident, respondent harbored ill-feelings towards complainant and his family.

Complainant further alleged that before this incident or sometime in 1998, he had refused the respondent who was trying to sell him a dilapidated cargo pick-up truck and Daewoo car. Complainant feared that respondent would use his judicial power to persecute him and seek vengeance for what he considered as complainant's infractions against him.^[5]

Complainant submitted affidavits executed by Ludovico M. Diong and Ernesto Bobiges who corroborated complainant's allegations. Diong testified that he was in the house of complainant (who was a prospective business client) when he saw respondent arrive, heard his disagreement with complainant and the demand for P200,000. Bobiges, on the other hand, was a colleague of complainant in the Armed Forces of the Philippines (AFP). He was visiting the complainant and witnessed the incident.^[6]

In his comment dated August 12, 2003, respondent maintained that complainant had never been his neighbor as he lived three kilometers away and they had not seen each other for 20 years. He denied having acted as an agent-broker for complainant or anybody else. He likewise denied offering to sell complainant a dilapidated truck or a Daewoo car since he never owned a dilapidated cargo pick-up nor could he recall if he had a Daewoo car in 1998.^[7]

Respondent countered that complainant was accused of and arrested for possessing 14 packs of *shabu* and ammunition. He further contended that he issued an order for the arrest of complainant for direct contempt after the latter filed a petition for certiorari using as grounds the false allegations in the present complaint. At the time of the comment, complainant was detained at the Barili jail not only for direct contempt but also for illegal possession of firearms. However, respondent neither admitted nor denied the receipt of the P100,000. He averred that complainant was simply being vengeful and that his complaint should be dismissed for being baseless.^[8]

In a resolution of this Court dated October 4, 2004, the complaint was referred to the presiding justice of the Court of Appeals for raffle among the justices of the same court.^[9] It was originally raffled to Associate Justice Mariflor P. Punzalan Castillo of the Nineteenth Division and subsequently^[10] to Associate Justice Apolinario D. Bruselas, Jr. of the Eighteenth Division for investigation, report and recommendation. However, no hearing was conducted because respondent manifested that he was submitting the case for decision based on the pleadings already filed.^[11] Complainant did not object.

In his report dated January 20, 2006, Justice Bruselas stated:

On 24 January 2005[,] the counsel for the respondent filed a Manifestation stating inter alia that the [complainant] filed "a manifestation that he is willing to submit this case for resolution based on the pleadings on record." No such manifestation from the [complainant] can be found in the records of the case, although no objection to the respondent's manifestation was filed as well despite service by mail thereof one year ago as of this writing.

xxx xxx xxx

The Honorable Court Administrator Presbitero J. Velasco Jr.^[12] in his written report and recommendation on the case stated that (t)he foregoing allegations and contentions of both parties have given rise to conflicting factual submissions which cannot be resolved on the basis of the pleadings submitted. Thus, to ascertain the veracity of the parties allegations and contentions, a more extensive and open inquiry is necessary to enable them to ventilate and substantiate their respective positions and ultimately arrive at the truth. This investigating justice cannot agree more with the esteemed court administrator. Regrettably, lost is the chance to determine once and for all the truth behind the avowals of the parties, with their respective manifestations of submitting the case for decision sans "open-court" testimonies or other evidence.

In administrative proceedings, the burden of proof that the respondent committed the act complained of rests on the complainant. He must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Failing this, the complaint must be dismissed.

The inherent weakness of affidavits, even sworn statements, being as they often are self-serving, easy to concoct, and non-receptive to cross-examination (or the constitutional right of the accused to confront witnesses against him), is well-known. Generally, an affidavit is not prepared by the affiant himself. For this reason, the infirmities of affidavits as species of evidence is a matter of judicial notice. To prove his case, the [complainant] could have filed other clear, sufficient and convincing evidence to substantiate his claim. This, he failed to do. Hard as he tried, this investigating justice may not simply overlook the improbability of the [complainant], seemingly a wealthy man of affairs and a former or incumbent member of the AFP, shelling out P100,000.00 upon demand by a judge, who was presumably unarmed. There were at least two witnesses to the transaction who could have readily rendered succor to halt the threat and/or intimidation.

xxx xxx xxx

On the other hand, one cannot close his eyes to [respondent's] dishonesty which tended not only to impair his credibility, obstruct or impede the investigation of his case, thereby also the administration of justice, but sets at naught the salutary principles embodied in our judicial canons. In one case, dishonesty justified the imposition of the penalty of dismissal to an erring utility worker.

xxx xxx xxx

IN VIEW OF THE ABOVE-CITED REASONS, and considering that [respondent] had been dismissed from the bench previously, it is respectfully RECOMMENDED that the respondent , at the very least, be

PERPETUALLY BARRED from reappointment to government service, and the instant petition be considered closed and terminated.^[13]

Justice Bruselas did not find substantial evidence to prove that respondent indeed committed the acts he was accused of but found him administratively liable for dishonesty. Consequently, he recommended that respondent be perpetually barred from reappointment to government service.

The OCA, in its memorandum dated January 10, 2007, agreed with the findings and recommendation of Justice Bruselas:

Respondent's dishonesty referred to by the Investigating Judge pertains to [respondent's] defenses that he has never been complainant's neighbor and that he does not own a cargo pick-up or a Daewoo Sedan car. Respondent's personal records on file with the Court proved otherwise. His personal data sheet shows that he lives within the same municipality where complainant lives, thus, they may not be totally unfamiliar with one another. His statement of Assets and Liabilities, on the other hand, shows that he owned a Daewoo car and an L-200 double cab acquired in 1996 and 1998 respectively.

xxx xxx xxx

Considering the foregoing and conformably to Section 11 (a), Rule 140^[14] of the Revised Rules of Court, as amended, we find it appropriate to adopt the investigating Justice's recommendation.

WHEREFORE, it is respectfully recommended that [respondent] be perpetually disqualified from being reinstated or appointed to any branch or agency of the government, including government-owned or controlled corporation.^[15]

While this case was pending, respondent was dismissed from the service in *Re: Report on the Judicial Audit Conducted in the RTC, Branch 60, Barili, Cebu* promulgated in 2004.^[16] The Court found him guilty of gross misconduct, gross ignorance of the law and incompetence.^[17] Aside from dismissal, his retirement benefits and privileges were also forfeited with prejudice to being reinstated in any branch of government service, including government-owned and controlled agencies or corporations.^[18]

In 2005 after respondent was dismissed, we resolved *Cañada v. Suerte*,^[19] a different case involving the same parties. It arose from a complaint dated November 8, 2003 wherein complainant charged respondent with arbitrary detention punished under Article 124 of the RPC for having issued an order citing him with direct contempt and ordering his arrest and detention for 14 days without bail. We found respondent guilty of gross ignorance of the law and rules of procedure and imposed on him the maximum fine of P40,000 considering that he had earlier been dismissed from the service.

It appears that the aforequoted case is intimately connected to the present case. In his comment, respondent stated that he issued an order for the arrest of

complainant for direct contempt because the latter filed a petition for certiorari and used as grounds the “false” allegations contained in his complaint. He also mentioned that complainant was detained in jail. Thus it can be surmised that the 2005 decision tackled respondent's act of causing complainant's unlawful detention while this complaint pertained to his acts prior to the detention.

The findings and evaluation of the OCA are well-taken.

In administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, i.e., that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[20] If a judge should be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge.[21]

Here, complainant failed to present concrete evidence to substantiate his charges against respondent. He did not appear before the investigating justice to prove his allegations.[22] While it is true that he attached to his complaint two affidavits to corroborate his story, the affiants—a prospective business partner and an AFP comrade—were not disinterested witnesses whose statements could be given credence. Mere allegations will leave an administrative complaint with no leg to stand on.[23] This is in line with the well-settled rule that an affidavit is hearsay unless the affiant is presented on the witness stand.[24] If, indeed, complainant was interested in pursuing the case against someone he perceived to be an erring judge, he should have appeared before the investigating justice and presented his evidence and witnesses to substantiate his claim.[25] Accordingly, the charges of grave abuse of authority, grave misconduct, grave coercion, harassment, oppression and violation of Article 215 of the RPC must be dismissed.

However, we agree with the investigating justice and OCA that respondent should be held liable for dishonesty.

In his defense, respondent claimed that he never owned a dilapidated cargo pick-up truck and could not recall if he had a Daewoo car in 1998. But his Statements of Assets and Liabilities for the years 1998 to 2001 on file in the Court prove otherwise. They show that among his personal properties were a Daewoo car acquired in 1996 and an L-200 double cab acquired in 1998.

Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

[26] This is a grave offense that carries the extreme penalty of dismissal from the service, even for the first offense,[27] with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification from re-employment in government service.[28]

In fixing the penalty, we take into consideration the fact that, including this case, we would have found respondent administratively liable for the second time already after his dismissal from the service. Therefore, as with the earlier *Cañada* case, we deem it proper to impose on him the maximum fine of P40,000.[29]