

FIRST DIVISION

[A.C. NO. 5321, September 27, 2006]

RAMON C. GONZALEZ, COMPLAINANT, VS. ATTY. ARNEL C. ALCARAZ, RESPONDENT.

D E C I S I O N

PANGANIBAN, CJ:

Disbarment cases are *sui generis*. Being neither criminal nor civil in nature, these are not intended to inflict penal or civil sanctions. The main question to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice.

The Case and the Facts

This case arose from a Complaint-Affidavit^[1] filed by Ramon C. Gonzalez with the Office of the Bar Confidant of the Supreme Court. The Complaint was subsequently referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.^[2] Complainant charged Atty. Arnel C. Alcaraz with grave misconduct, abuse of authority, and acts unbecoming a lawyer. The antecedents were summarized by the IBP Commission on Bar Discipline (IBP-CBD) as follows:

"x x x [C]omplainant alleges that on 11 August 2000, while he was driving along the South Superhighway upon entering the Sucat Toll Gate heading towards Makati, respondent, who was driving a Nissan Infiniti suddenly cut across his path while overtaking him and almost hit his car had he not been able to evade it. According to complainant, he chased respondent's car and when he was side by side with respondent's car, he angrily confronted respondent and then drove on. Complainant claims that respondent then chased him and shot him twice but fortunately missed him by a few inches[,] but broken glass coming from the shattered window allegedly hit him and slightly wounded his right arm and stomach. Complainant adds that respondent allegedly tried to escape but he was able to chase him and block his way at the Nichols Toll Gate where the PNCC guards responded to his call for assistance. According to complainant, respondent attempted to escape and avoid the PNCC guards by 'proclaiming boisterously that he is a lawyer and a customs official' but complainant was able to block his way again and their vehicles collided in the process. Complainant claims that he requested the PNCC guards to confiscate respondent's firearm and accompany them to the nearest police station. At the time of the "arrest," respondent allegedly opened the back door of his car and pretended to have accidentally dropped so much money which distracted the policemen from further searching the car.

"At the police station, respondent allegedly identified himself and his lady companion, a certain Ferlita Semeniano, and [said] that he was the Deputy Customs Collector assigned at Batangas City. Complainant claims that respondent yielded 'one (1) Super .38 cal. Springfield Automatic Pistol, SN NMII 3138, one (1) magazine with seven (7) live ammos and three (3) spent (empty) shells.' Complainant adds that respondent presented only an unsigned Memorandum Receipt (MR) of the firearm without any Mission Order or Permit to Carry. Complainant claims that respondent allegedly kept calling persons to help him and a 'fabricated Mission Order was brought and presented by another person more than eight hours after the shooting incident and apprehension.'

"Complainant alleges that the Nissan Infiniti used by respondent is allegedly a luxury vehicle which was not covered by any document whatsoever and 'it was not verified whether stolen or smuggled.'

"Complainant finally alleges that the PNP Crime Laboratory examined his car and 'they recovered one slug in between the wall of the left rear door while the other bullet went through the right front seat and exited at the left rear door of complainant's car and that cases of Frustrated Homicide and Illegal Possession of Firearms were already filed at the Parañaque City Prosecutor's Office.

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"In his Comment dated 04 January 2001, respondent claims that the present administrative case is unfounded and unwarranted and was allegedly filed in bad faith, with malice and ill motive and allegedly has no other purpose but to harass, vex, humiliate and dishonor him. In support thereof, respondent points to the fact that complainant filed 'substantially identical complaint affidavits with the same identical alleged cause of action as that of the present administrative case at [various] judicial, quasi-judicial and administrative tribunals and accused him of forum-shopping.

"Respondent denied the narration of facts stated in complainant's Complaint-Affidavit as 'self-serving, a misrepresentation of facts and obviously tainted.' Respondent claims that he was not the aggressor during the incident and that he did not provoke complainant. Respondent claims that he 'justly acted in self-defense and defense of a stranger under the true actuality of facts and circumstances the[n] prevailing.'

"Respondent also claims that the acts complained of in the present case were not connected with the practice of the legal profession and the fact that he was a lawyer is merely coincidental, immaterial and irrelevant.

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"In connection with the cases filed by the parties against each other, respondent submitted the xxx Resolutions/Decisions issued in said cases to show that the charges filed against him by the complainant were

dismissed while the criminal cases he filed against the latter [were] filed in court.

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"Finally, it is the submission of the respondent that since the alleged acts complained of are not within the sphere of his professional duties as a lawyer, but rather are acts done in his non- professional or private capacity, the same, cannot allegedly be the subject of an administrative complaint for disbarment."^[3]

Report and Recommendation of the Integrated Bar of the Philippines

In his Report,^[4] IBP Investigating Commissioner Rafael Antonio M. Santos said that the dismissal of the criminal and other administrative charges filed by complainant indicated that respondent's version of the incident was given credence by the investigating officials and agencies of the various other tribunals in which these charges were filed. Consequently, since no sufficient evidence warranted the imposition of further disciplinary sanctions on respondent, the investigating commissioner recommended the dismissal of the administrative case.

In Resolution No. XVI-2005-29 dated March 12, 2005, the board of governors of the IBP adopted the Report and Recommendation of Commissioner Santos.

On July 8, 2005, the Resolution, together with the records of the case, was transmitted to this Court for final action, pursuant to Section 12(b) of Rule 139-B of the Rules of Court. On August 4, 2005, complainant asked this Court to set aside Resolution No. XVI-2005-29 of the IBP board of governors. Upon orders of this Court,^[5] respondent filed on August 22, 2005, his Comment on complainant's plea.

The Court's Ruling

The Court disagrees with the findings and recommendation of the IBP.

Administrative Liability of Respondent

At the outset, we stress that the dismissal of the criminal cases against respondent did not erase the occurrence of the shooting incident, which he himself does not deny. Moreover, this incident has been established by clear and convincing evidence. Thus, he must face the consequences of his actions.

The first Canon of the Code of Professional Responsibility provides as follows:

"CANON 1. - A lawyer shall uphold the constitution, *obey the laws of the land and promote respect for law* and legal processes."^[6]

Furthermore, respondent bound himself to "obey the laws" in his attorney's oath,^[7] which underscores the role of lawyers as officers of our legal system. A lawyer's brash transgression of any, especially a penal, law is repulsive and reprehensible and cannot be countenanced by this Court.^[8]

Admitting that he fired shots in the direction of complainant while they were speeding along South Luzon Expressway,^[9] respondent justifies his actions by claiming self-defense and defense of a stranger. During the traffic altercation, complainant allegedly exchanged angry words with respondent and, from an open car window, even threw a handful of coins at the latter.^[10] Respondent further avers that, from his higher vantage point, he saw complainant draw a pistol.^[11] The former contends that when he fired the shots, he had no intention of hitting complainant but merely wanted to scare him away.

Reviewing the factual circumstances, we are convinced that the defenses proffered are mere afterthoughts. Based on the physical and documentary evidence, complainant's version of the incident is more credible.

First, the allegation of respondent that complainant hit him with coins is highly improbable. At that time, both vehicles were speeding along the highway. Since the PNP Crime Laboratory Report^[12] showed that the bullets fired by respondent had come from the right side, his vehicle must have been to the right of complainant's. If we were to accept this version, the coins hurled by complainant had to pass through his car's right window and then through the left window of respondent's admittedly taller sports utility vehicle (SUV). Given their relative positions, it is highly incredible that the coins could have hit respondent and his companion.

Second, assuming that respondent and his companion were indeed hit by coins, this alleged fact was not a sufficient unlawful aggression that would justify shooting at complainant.

As a lawyer, respondent should know that the following three requisites must concur to justify self-defense: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.^[13] On the other hand, in defense of a stranger, the first two requisites must also be present together with the element that the person defending was not induced by revenge, resentment or other evil motive.^[14]

Of these requisites, unlawful aggression is a *conditio sine qua non* for upholding both self-defense and defense of a stranger; the fundamental *raison d'etre* of these defenses is the necessity to prevent or repel an aggression.^[15] The alleged throwing of coins by complainant cannot be considered a sufficient unlawful aggression. Unlawful aggression presupposes actual, sudden, unexpected or imminent threat to life and limb.^[16] There was no aggression to prevent or repel. Absent this imminent threat, respondent had no legal reason to shoot "in the direction of complainant."

Third, for lack of supporting evidence, neither can merit be accorded to respondent's claim of imminent threat after allegedly seeing complainant draw a pistol. The Joint Affidavit^[17] of PNCC Officers Florencio Celada y Seso, Jr. and Mario Puso y Visaya mentioned no firearm found in the possession of complainant. Except for the bare and belated allegations of respondent, there was no showing that complainant's alleged possession of the pistol had been reported to the PNCC officers or later to the police headquarters. Thus, without proof of the existence of the firearm,