

## EN BANC

**[ A.M. No. RTJ-03-1801, March 23, 2004 ]**

**GEORGE L. KAW, COMPLAINANT, VS. JUDGE ADRIANO R. OSORIO, RTC BRANCH 171, VALENZUELA CITY, RESPONDENT.**

### DECISION

#### **CORONA, J.:**

This is a complaint filed by George L. Kaw against Judge Adriano R. Osorio of the Regional Trial Court of Valenzuela, Metro Manila, Branch 171, for dishonesty, extortion, graft and corruption, and violation of Rule 5.04, Canon 5 of the Code of Judicial Conduct relative to the conduct of the trial and adjudication of Criminal Case Nos. 10029-V-90 to 10035-V-90 entitled *People of the Philippines vs. Benito Go, Wilson Go and John Tan* for estafa and Criminal Case No. 613-V-91 entitled *People of the Philippines vs. Roberto Go and Benito Go* also for estafa.

In his answer dated January 12, 1999, respondent judge vehemently denied all the material allegations in the complaint. He alleged that the charges were baseless and that the only motive of complainant was to harass, smear and malign his name.

In a resolution dated March 13, 2000,<sup>[1]</sup> the Court referred the case to Associate Justice Elvi John Asuncion of the Court of Appeals for investigation, report and recommendation.

Culled from the records, the facts of the case, as summed up by Investigating Justice Asuncion, are as follows:

Complainant George L. Kaw avers that while Criminal Cases Nos. 10029-V-90 to 10035-V-90 were ongoing in the early part of May 1993, he was approached by a state prosecutor who said that he was sent by Judge Osorio to ask if the complainant wanted to be assured of a favorable judgment in the criminal cases which the latter had filed and were heard by the judge. The judge's emissary told George Kaw that a favorable decision in all cases would cost P100,000.00, P40,000.00 of which was to be paid immediately and the balance of P60,000.00 to be handed over upon promulgation of the judgment in all cases.

As an initial reaction, complainant avers that he did not want to accept the offer since he had adequate evidence for the conviction of the accused, but at that time, he felt he had no choice but to accept the offer of Judge Osorio and thought that if he would reject it, he would lose all his cases. So, he relented and accepted the offer. As a consequence, in the morning of May 18, 1993, according to the complainant, he handed over to the state prosecutor the amount of P40,000.00 for delivery to Judge Osorio which turned out to be only the first of a series of payments requested by and made to Judge Osorio. As narrated by the complainant, to wit:

1. July 22, 1994, Friday

Judge Osorio called me up at my office and informed me that his wife died. My wife and I went to the wake of the wife of Judge Osorio at a funeral parlor located at Araneta Avenue, Quezon City and while there handed to the latter a UCPB Check bearing number 46193 in the amount of P5,000.00, a photocopy of which is hereto attached as Annex "A."

2. December 13, 1994, Tuesday

Judge Osorio, through the state prosecutor, requested for a meeting with me at the Steaktown restaurant located at West Avenue, Quezon City as per charge invoice #23764 and #7933 dated December 13, 1994 hereto attached as Annex "B1" and "B2," at the meeting attended by me and my wife, Judge Osorio asked for the amount of P10,000.00 which he said he needed very badly. Since I had cash with me at that time, I gave the amount to Judge Osorio. After I handed over the money to Judge Osorio, I asked him whether the amount of P10,000.00 given that day would be deducted from the agreed balance of P60,000.00, Judge Osorio said that the P10,000.00 had nothing to do with the balance of P60,000.00.

3. March 16, 1995, Thursday

The son of Judge Osorio solicited from me the amount of P1,000.00 allegedly for a certain project. I accommodated this solicitation after the State prosecutor called me by telephone and asked me to help the son of Judge Osorio.

4. March 15, [sic-no year indicated] Tuesday

Judge Osorio's daughter called me up by telephone and informed me that it was her father's birthday and was inviting me and my wife to their residence. My wife and I then went to his house located at #44 M. H. del Pilar St., Tugatog, Malabon and gave him the amount of P10,000.00.

5. On one occasion, Judge Osorio told me that my lawyer was not performing well and that I should change him. He suggested that I engage the services of the Law Firm of Quijano, Padilla and Natividad where his brother-in-law, Marcelino Bunag, is connected, to facilitate, according to him, the decisions of the cases. Judge Osorio even gave me the address and telephone number of said law firm.

6. Not wanting to displease Judge Osorio on May 10, 1996 at about 5 o'clock in the afternoon, I visited the Quijano, Padilla and Natividad Law Offices with address at 320 Escolta corner T. Pinpin Street. When I talked to Mr. Bunag, he asked for the amount of P200,000.00 as acceptance fee and guaranteed that I will win all my cases before Judge Osorio."

Since the amount being asked by Mr. Bunag was too stiff, and I was not impressed with the office of the law firm represented by Mr.

Bunag and suggested by Judge Osorio, and considering that I already had an agreement with Judge Osorio with respect to the pending cases before him, I did not hire the services of Quijano, Padilla and Natividad Law Offices. I nonetheless as suggested by Judge Osorio, replaced my lawyer.

Complainant avers that relative to Criminal Case No. 613-V-91, when the prosecution and the defense terminated the presentation of their evidence, accused Benito Go and Roberto Go moved for the reopening of the cases on the ground that they were not given their day in court and assured the complainant that if the cases will be reopened, they will confess to the court that the mastermind in the swindling was accused Wilson Go. The court denied the motion and scheduled the date of the promulgation of the decision in the cases on August 29, 1997 at 8:30 a.m.

On the first week of August 1997, complainant decided to see Judge Osorio at his residence in order to confront him about the rumors spreading from reliable sources that Wilson Go was bragging because he was sure to be acquitted in the criminal cases which were filed against him and was heard to say that Judge Osorio agreed to acquit him in consideration of the amount of almost a million pesos. He asked the judge if it was true that aside from his commitment to the complainant, he also committed himself to accused Wilson Go. Before answering, the judge allegedly kept quiet for some time and told complainant that the case against Wilson Go was weak and that the case is being reviewed by his clerk of court. The judge further assured him not to worry after complainant's reminder about their agreement.

Not being reassured, complainant reported the matter to the state prosecutor and sought his help.

On August 25 or 26, 1997, the complainant called up Atty. Gregorio Y. Narvasa, II in order to seek his counsel. Upon narration of the events that transpired, complainant pleaded Atty. Narvasa to accompany him and the state prosecutor to see Judge Osorio at his residence since he was one of the lawyers handling one of the cases against Benito Go and Wilson Go. Complainant feared that if the accused would be acquitted in said criminal cases, they may be forever barred from being charged criminally for the wrong that they had committed against him. Atty. Narvasa acceded to the request under the following conditions: (1) he would not talk to the judge; (2) they would ask the judge to decide the case on its merits; and (3) whether or not Judge Osorio rules for or against the complainant, the latter will file an administrative case against the judge before the Supreme Court.

On August 28, 1997, Atty. Narvasa, the state prosecutor and the complainant arrived at the residence of Judge Osorio wherein they were led to the sitting room and asked to wait for him. When Judge Osorio arrived, the state prosecutor reminded him of the scheduled promulgation of judgment the following day. The judge told them he cannot tell them what his decision was before the actual

promulgation of judgment and made remarks to the effect that his decision of cases are always based on the evidence.

Shortly before the promulgation of the decision, the complainant learned that the state prosecutor filed a motion to inhibit the judge. The prosecutor told him that it was Judge Osorio who prompted the motion and dictated the reasons and grounds to be alleged in the motion, to wit:

1. That with all due respect to the Presiding Judge, complainant received reliable information that some of the accused have been bragging that they have won the case and were able to secure judgment of acquittal through the intercession of persons very closed (sic) to the judge;
2. That in fairness to the Honorable Presiding Judge and to give peace of mind to the complainant, the undersigned State Prosecutor deems it proper and logical that the Honorable Judge inhibit himself from taking further action on the instant case and transfer the same to another Branch of equal competence and integrity;
3. That this Motion is not intended to mean that the prosecution as well as the complainant have lost faith in the honesty and integrity of the Honorable Presiding Judge but solely because of the above-stated reason.

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Upon receiving the motion, the Court postponed the promulgation of the decision and required counsels for the accused to file their comment to the motion within ten (10) days therefrom.

On September 4, 1997, complainant's brother Valentino Kaw came and informed him about the conversation he had with Wilson Go regarding the subject criminal cases. According to Valentino Kaw, Wilson Go said that: (1) he was sure to be acquitted; (2) the motion filed by the prosecution for the inhibition of Judge Osorio would be denied; (3) the decision in the criminal cases were already made; (4) he (Wilson Go) held Judge Osorio by his neck because he had given to the Judge close to a million pesos; (5) he used his lawyer to get to and influence Judge Osorio; and (6) his acquittal was merely a matter of money. (Annex "D," *affidavit of Valentino Kaw*)

On September 16, 1997, Judge Osorio issued a Resolution denying the motion for inhibition and setting the promulgation of decision of these cases on September 22, 1997 at 8:30 a.m. A motion for reconsideration of the Resolution dated September 16, 1997 was filed but was subsequently denied.

On September 22, 1997, the decision was promulgated, the dispositive portion of the joint decision reads:

WHEREFORE:

Accused Benito Go is Guilty beyond reasonable doubt of the offense charge (sic), he is hereby sentenced to suffer an indeterminate imprisonment from TWELVE (12) YEARS and ONE (1) DAY of *Reclusion Temporal*, as minimum, to FIFTEEN (15) YEARS of *Reclusion Temporal*, as maximum with the accessory penalties prescribed by law to pay the offended party the amount of P100,020.20 and to pay the costs.

Accused John Tan and Wilson Go are hereby [a]cquitted with costs *de officio*.

CRIMINAL CASE NO. 10030-V-90

Having proven the guilt of accused Benito Go beyond reasonable doubt, he is hereby sentenced to suffer an indeterminate imprisonment from SIX (6) YEARS and ONE (1) DAY of *Prision Mayor* as minimum, to NINE (9) YEARS of *Prision Mayor*, as maximum, with the accessory penalties prescribed by law and to pay the offended party the sum of P34,255.20 and to pay the costs.

For failure of the prosecution to prove the guilt of accused Wilson Go and John Tan beyond reasonable doubt, they are hereby ACQUITTED of the offense charged with costs *de officio*.

CRIMINAL CASE NO. 10031-V-90

The prosecution have established the guilt of accused Benito Go beyond reasonable doubt[. H]e is hereby sentenced to an indeterminate imprisonment from TWELVE (12) YEARS and ONE (1) DAY of *Reclusion Temporal*, as minimum to FIFTEEN (15) YEARS of *Reclusion Temporal*, as maximum with the accessory penalties prescribed by law and to pay the costs of suit.

Accused Wilson Go and John Tan are hereby ACQUITTED of the offense charged with costs *de officio*.

CRIMINAL CASE NO. 10032-V-90

Having established the guilt of accused Benito Go beyond reasonable doubt, he is hereby sentenced to an indeterminate imprisonment from SIX (6) YEARS and ONE (1) DAY of *Prision Mayor*, as minimum to TEN (10) YEARS of *Prision Mayor*, as maximum with the accessory penalty prescribed by law and to pay the offended party the amount of P50,000.00, and costs of suit.

For failure of the prosecution to prove their guilt beyond reasonable doubt, accused Wilson Go and John Tan are hereby ACQUITTED with costs *de officio*.

CRIMINAL CASE NO. 10033-V-90

Accused Benito Go having been found guilty beyond reasonable doubt, he is hereby sentenced to suffer an indeterminate imprisonment from SIX (6) YEARS and ONE (1) DAY of *Prision Mayor*, as minimum, to NINE (9) YEARS of *Prision Mayor*, as maximum, with the accessory penalty