

EN BANC

[A.M. No. P-91-621, November 10, 2004]

**OFFICE OF THE COURT ADMINISTRATOR COMPLAINANT, VS.
VIRGILIO G. CAÑETE, STENOGRAPHIC REPORTER, BRANCH 24,
REGIONAL TRIAL COURT, IPIL, ZAMBOANGA DEL SUR,
RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Some time in 1979, respondent Virgilio G. Cañete was appointed as Court Stenographer of the First Municipal Trial Court of Ipil, Zamboanga del Sur, presided by Judge Marcelo B. Rabosa, Sr. On July 3, 1990, respondent was appointed as Stenographer III at the Regional Trial Court of Ipil, Zamboanga del Sur, Branch 24, presided by Judge Sergio S. Apostol. However, per arrangement with Judge Apostol, respondent remained at the sala of Judge Rabosa until September 24, 1990.^[1]

In the meantime, on January 22, 1990, Pol./Sgt. Anastacio Partosa turned over to Fely C. Carriedo, Clerk of Court (COC) in the sala of Judge Rabosa, a Colt Commander 9 mm. with serial no. 008112 as part of the exhibits in a criminal case for Illegal Possession of Firearm pending before Judge Rabosa, docketed as Criminal Case No. 2221 and entitled *People of the Philippines vs. Marciano Adlawan*. The firearm was placed inside a brown envelope which was stapled. COC Carriedo kept the firearm in a wooden cabinet (aparador) located in the chambers of Judge Rabosa along with the other exhibits, records and office supplies. COC Carriedo kept the key to the lock although the cabinet is open almost daily. She conducts an inspection of the cabinet's contents almost everyday.^[2]

On October 19, 1990, when respondent was already stationed at the sala of Judge Apostol, Judge Rabosa asked COC Carriedo to retrieve the firearm. It was only then that she discovered that it was missing. Despite her efforts, the gun was not found. COC Carriedo wrote a report to Judge Rabosa, who in turn, required COC Carriedo to submit her formal explanation regarding the incident. In her explanation dated October 25, 1990, COC Carriedo said that it was only she who held the key to the cabinet where the firearm was kept; that there were times when respondent would ask her to leave the cabinet open at the end of office hours on Fridays as he rendered skeletal work on Saturdays and he needed access to the records which were also kept in the same cabinet; that this has been their arrangement for the past twelve years until respondent reported to the sala of Judge Apostol on September 24, 1990.^[3]

Judge Rabosa then referred the case to the Office of the Court Administrator,^[4] while Atty. Marcelo R. Rabosa, Jr., Clerk of Court of the Regional Trial Court of Ipil (Branch 24), sala of Judge Apostol, forwarded COC Carriedo's report and

explanation to the Court.^[5] Judge Rabosa also wrote to the National Bureau of Investigation (NBI) requesting for appropriate action and assistance.^[6] Thereafter the NBI transmitted a letter dated March 7, 1991, recommending the filing of an administrative charge against respondent.^[7]

In its Resolution dated April 23, 1991, the Court directed the Executive Judge of the RTC of Pagadian City to conduct an investigation and submit a report and recommendation thereon.^[8]

On August 7, 1991, the Court resolved to refer the case to the Office of the Court Administrator for the filing of the proper administrative complaint against respondent.^[9] Thus, on August 19, 1991, respondent was formally charged by the Deputy Court Administrator with Grave Misconduct, committed as follows:

That on or about August 25, 1990, in the Municipality of Ipil, Province of Zaboanga (sic) del Sur, respondent Virgilio Canete, being the Stenographic Reporter of the Municipal Circuit Trial Court in Ipil-Tungawan and presently assigned at the Regional Trial Court, Branch 24, RTC at Ipil, Zamboanga del Sur and having access to the evidence locker of said MCTC did then and there willfully, unlawfully and with intent to gain, without any lawful authority, and with grave abuse of confidence, take and carry away and appropriate one (1) 9mm Colt Pistol then in court custody as evidence in Criminal Case No. 2221 (People of the Philippines vs. Marciano Adlawan) pending in the MCTC, to the prejudice of the speedy administration of justice and public interest, and for which his immediate dismissal from the service is warranted.^[10]

On August 16, 1991, COC Carriedo submitted her Position Paper. She suspects respondent Cañete as the one who took the gun because he had access to the cabinet and he used to retrieve office supplies for his transcriptions from the cabinet. She buttresses her suspicion with the affidavits of several employees, to wit: (1) Affidavit dated November 5, 1990 of Thelma C. Ridad, Civil Registry Officer of Ipil, whose office is located in the second floor of the Municipal Building where the Municipal Circuit Trial Court is also located, attesting that on August 22, 1990, between 12 to 1 o'clock in the afternoon, she saw respondent with a gun tucked in his waist;^[11] (2) Affidavit dated October 30, 1990, of Jose Mariveles, Assessment Checker of the Municipal Treasurer's Office, stating that in the morning of August 25, 1990, he saw respondent hurriedly going down the stairs with a "bulging" brown envelope tucked under his armpit, with the handle of the gun protruding on a torn part of the envelope;^[12] (3) Affidavit dated October 26, 1990 of Abdujarak I. Maule, MTC Interpreter, and Affidavit dated October 30, 1990 of Ernesto D. Sumatra, Process Server, of the First Municipal Circuit Trial Court of Ipil-Tungawan-R.T. Lim, Zamboanga del Sur, stating that only COC Carriedo and respondent have access to the locker where the gun was kept;^[13] (4) Affidavit dated October 30, 1990 by Vicente L. Bernardo, MCTC Aide of the First Municipal Circuit Trial Court of Ipil-Tungawan-R.T. Lim, Zamboanga del Sur, averring that some time in the early part of August 1990, he overheard respondent talking to a soldier about a particular firearm, wherein the soldier said that a General who owned it wanted it back.^[14] The court employees further executed supplementary affidavits stating that respondent asked for their help in the recovery of the firearm.^[15]

Respondent, on the other hand, filed his Answer on November 27, 1991. As expected, respondent denies having taken the firearm on August 25, 1990. Respondent alleges that it was impossible for him to have done so because on said date, he was in their church in Guitan, Ipil, where they gathered bamboo poles for the construction of their church's fence. Respondent also belied Jose Mariveles' statement, contending that he could not have been so careless as to place the firearm inside a torn envelope when he could have just gotten another envelope or simply tuck it under his shirt. Although he, indeed, went to see Mariveles, it was to confront the latter as to the contents of the affidavit. Mariveles allegedly admitted to him that it was Judge Rabosa who coached him on what to state in the affidavit. Respondent further stated that his distraught over the loss of the firearm and his attempts to locate the same do not mean that he was responsible for it, as concluded by the employees. The statements he allegedly uttered to the employees meant that he was under pressure to take responsibility for it.^[16]

Per Resolution dated January 14, 1992, the Court referred the case to Executive Judge Franklyn Villegas of Pagadian City, Zamboanga del Sur, for investigation, report and recommendation.^[17]

Subsequently, respondent was charged before the Sandiganbayan with Qualified Theft, in an Information dated January 29, 1993, docketed as Criminal Case No. 18763, which reads:

That some time between the months of August, 1990 to October, 1990 or thereabout at Poblacion Ipil, Province of Zamboanga del Sur, Philippines, within the jurisdiction of this Honorable Court, accused Virgilio Cañete, being then a Stenographic Reporter of the First municipal (sic) Circuit Trial Court of Ipil, Zamboanga del Sur, while said accused had access to court exhibits kept inside the court locker, did then and there wilfully, unlawfully and feloniously with grave abuse of confidence, with intent to gain and without the consent of anybody, take, steal and carry away from inside the court locker one (1) 9mm Pistol "Colt Commander" with Serial No. 00812, valued in the amount of P55,000.00, Philippine Currency, which pistol is an exhibit in court in Criminal Case No. 2221, entitled People of the Philippines, plaintiff, versus Marciano Adlawan, accused, for Illegal Possession of Firearm.^[18]

On September 15, 2000, the Sandiganbayan rendered its decision acquitting respondent of the crime charged, thus:

WHEREFORE, accused Virgilio G. Cañete is hereby ACQUITTED of the crime of Qualified Theft defined and penalized under Article 310 of the Revised Penal Code. The cash bond filed by the accused for his temporary liberty is hereby ordered cancelled.

SO ORDERED.^[19]

On January 16, 2001, the Court required Investigating Judge Franklyn Villegas to submit his report and recommendation on the matter within twenty days from notice.^[20]

It appears however, that Judge Villegas was not able to comply with the foregoing order.

On May 31, 2004, DCA Christopher O. Lock issued a Memorandum addressed to Hon. Jacob T. Malik, Acting Presiding Judge of the Regional Trial Court (Branch 19) of Pagadian City, directing him to render the necessary decision in this case.^[21]

In a transmittal letter, dated June 8, 2004, Judge Malik submitted his Report recommending the dismissal of the administrative case against respondent, citing *Festejo vs. Crisologo*,^[22] to wit:

In other words, where the crime committed is not essentially connected with the performance of the official duties, the officer may not be proceeded administratively based thereon until after a final judgment of conviction shall have been rendered by the court of justice.

In the case at bench, the subject of both the Administrative Case and the Criminal case pending before the Sandiganbayan, involves the alleged unlawful taking by Virgilio Cañete of a 9mm cal. Pistol, an exhibit in Criminal Case No. 2221, pending before the MCTC of Ipil-Tungawan (People vs. Marciano Adlawan). Hence, it clearly follows that the offense charged against Virgilio Cañete is not essentially connected with the performance of his official function as Stenographer of said MCTC, thus a final judgment of conviction rendered by a Court of Justice becomes a requisite *sine qua non* for the disciplinary action being sought, in accordance with the above pronouncements of the Honorable Supreme Court.^[23]

On September 15, 2000, the Honorable Fourth Division of the Sandiganbayan, rendered its Decision (a copy of which was obtained belatedly), the dispositive portion of which reads as follows:

WHEREFORE, accused Virgilio C. Cañete is hereby ACQUITTED of the crime of Qualified Theft defined and penalized under Article 310 of the Revised Personal Code. The cash bond filed by the accused for his temporary liberty is hereby ordered cancelled.

SO ORDERED.

In view of this development, the undersigned so holds that there being a finding of a court of justice, acquitting and upholding the presumption of innocence of respondent/accused Virgilio G. Cañete, after a long, extensive and exhaustive adversarial proceedings, the respondent must likewise be exonerated in the present Administrative Case filed against him.

The Court finds that the administrative charge against respondent should be dismissed.

The long-settled rule is that the dismissal of a criminal case on the ground of insufficiency of evidence against an accused who is also a respondent in an