

## THIRD DIVISION

[ A.M. No. P-98-1275, March 26, 2003 ]

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
EDGARDO A. MABELIN, RESPONDENT.

### D E C I S I O N

**CARPIO MORALES, J.:**

Edgardo A. Mabelin, Legal Researcher II of the Regional Trial Court (RTC), Branch 14, Ligao, Albay, was charged with ***Dishonesty and Incompetence in the performance of duty*** by the Office of the Court Administrator (OCA).

The following facts spawned the filing of the case:

An information for Illegal Possession of Firearm and Ammunitions was filed against Zaldy Gazer y Lizano on January 24, 1991<sup>[1]</sup> before the RTC of Albay where it was docketed as Crim. Case No. 2781 (the criminal case). The firearm was described in the Information as "*COVINA model, Cal. 22, Serial No. F00797.*"

During the trial of the criminal case conducted by Judge Jose S. Sañez, Presiding Judge of Branch 13 of the Albay RTC at Ligao, in his capacity as pairing judge of Branch 14 of the same court to which it was raffled, the firearm was submitted in evidence and entrusted on September 19, 1991 to the custody of respondent who had been Acting Clerk of Court of Branch 14 of the court since 1989.

Finding that the prosecution failed to prove that the firearm subject of the criminal case was the same firearm seized from the accused and, in any event, finding that the firearm was inadmissible in evidence, the accused was acquitted by Decision of February 6, 1992 rendered by Judge Sañez, the dispositive portion of which reads:

**WHEREFORE**, for failure of the prosecution to prove the guilt of the accused Zaldy Gacer Y Lizano beyond reasonable doubt, this **case is hereby ordered dismissed**. Consequently, unless said accused is detained for some other lawful cause, he is hereby ordered immediately released from further detention.

The **.22 caliber gun** and the rounds of ammunitions presented as the prosecution's exhibits are **hereby ordered forfeited in favor of the government**, the same to be disposed of in accordance with existing laws. No pronouncement as to costs.

SO ORDERED.

Ligao, Albay, Philippines, February 6, 1992.<sup>[2]</sup> (Emphasis and underscoring supplied.)

On March 19, 1997, or more than five years after the decision in the criminal case was promulgated, Judge Sañez, then already the Executive Judge of the RTC at Ligao, sent a letter addressed to the Branch Clerk of Branch 14 of the court requesting a written report on the whereabouts of the COVINA firearm subject of the criminal case after finding out that the same was neither in the custody of the court nor with the Firearms and Explosives Unit (FEU) of the Philippine National Police (PNP). The letter was received by Atty. Jesus Orlando M. Quiñones, who was appointed Branch 14 Clerk of Court in 1995. Since respondent was the Acting Clerk of Court of Branch 14 at the time the criminal case was tried and decided, Atty. Quiñones forwarded the letter to him.

In reply to the query of Judge Sañez, respondent explained<sup>[3]</sup> that in the later part of 1992, Ligao RTC Branch 13 Presiding Judge Romulo SG Villanueva, who was designated Acting Presiding Judge of Branch 14 of the court (on March 13, 1992, and later detailed to RTC Lipa in early 1993 up to late 1993 when he returned to the RTC Ligao, Branch 12), verbally requested that the custody of the firearm be transferred to him to which he acceded.

Judge Sañez thus brought the matter to the Office of the Court Administrator (OCA) by letter of April 14, 1997, with the suggestion that an investigation be conducted thereon. The OCA, in turn, directed Consultant Justice Narciso T. Atienza to conduct a fact finding investigation on:

1. The whereabouts of the firearm, Covina Cal. 22 Serial No. F00797, subject matter of Criminal Case No. 2781 for Illegal Possession of Firearms and Ammunitions decided by Branch 14 of the Regional Trial Court at Ligao, Albay; [and]
2. The report of Branch 14 Court Legal Researcher Edgardo A. Mabelin that custody of said firearm was transferred to then Acting Presiding Judge Romulo SG Villanueva.<sup>[4]</sup>

Judge Villanueva was later to claim during the investigation of the present case conducted by Justice Atienza as follows: He bought the firearm from respondent for P4,500 upon the latter's representation that he owned it and was a loose firearm. He, thereafter, gave the firearm to a friend who had it tested and volunteered to have it registered in his (Judge Villanueva's) name. About four months later, this same friend visited him to collect a P5,000.00 debt but as he (Judge Villanueva) had no cash and the firearm had not been registered in his name yet, he offered to his friend, and the latter agreed, to set-off his debt with the firearm. When the determination of the whereabouts of the firearm subject of the criminal case came about, he desperately tried to locate his friend but to no avail. He does not, however, know if the firearm sold to him is the same firearm subject of the criminal case.

Upon the conclusion of Justice Atienza's investigation during which Judge Villanueva appeared with counsel (respondent was without counsel as by his claim he could not afford the services of one), the Justice, crediting Judge Villanueva's explanation, recommended in his Report<sup>[5]</sup> dated May 14, 1998 that respondent be charged administratively for Dishonesty and that Atty. Quiñones be directed to file a criminal complaint for Malversation of Government Property with the Office of the Ombudsman for Luzon.

The material portions of Justice Atienza's Report read, quoted *verbatim*:

x x x The resolution of the instant investigations hinges on credibility. Your investigator went over the statements of the parties and, the records of Criminal Case No. 2781, thoroughly and found that the decision was promulgated on February 6, 1992, while Judge Villanueva was designated as Acting Presiding Judge of RTC Branch 14 only on March 13, 1992 (Exh. "3", Villanueva). In other words, Judge Villanueva was designated as Acting Presiding Judge of RTC more than one month after the decision of Criminal Case No. 2781 has been promulgated. This gives credence to asseveration of Judge Villanueva that he was not aware that the firearm sold to him by Mr. Mabelin, assuming that is was, is the firearm subject of Criminal Case No. 2781.

Judge Villanueva asserted that he bought a firearm, pistol type, from Mr. Mabelin but he can not recall its brand and serial number. He claimed that he paid Mr. Mabelin the amount of P4,500.00, in three installments. The assertion was not denied. Mr. Mabelin did not also re-act to the statement of Judge Villanueva at the initial hearing on March 2, 1998, that he requested a lawyer tried to accompany him because he might not be able to control his emotion in view of the falsity of his accusation. Your investigator noticed that Mr. Mabelin just bowed his head and stared at the floor after Judge Villanueva had stated his reason why he asked a lawyer friend to accompany him.

Mr. Mabelin heard Judge Villanueva said that the accusation against him that he asked for the custody of the firearm is false. He also heard the testimony of Judge Villanueva that he (Villanueva) paid P4,500.00 for the firearm. Confronted with these statements which can not simply be brushed aside, or be left unanswered, your investigator finds it strange why Mr. Mabelin chooses not to deny or rebut such statements. It must be remembered that Judge Villanueva and Mr. Mabelin were warned at the initial investigation that Criminal prosecution and/or administrative action will be recommended against the erring party. For not saying a word in the face of such accusation is an admission by silence.

x x x

The annotation found at the back of page 5 of the decision ["the firearm subject of this case, is in the custody of Judge Romulus SG. Villanueva, Acting Presiding Judge, RTC, Br. 14, Legato, Albany"] is undated and unsigned. (Exh. "2", Villanueva & Exh. "B", Mabelin). It could have been written by Mr. Mabelin after he received the letter of Judge Sañez dated March 19, 1997, which was endorsed by Atty. Quiñones or at the time after the record was given to him by Atty. Quiñones for delivery to your investigator. His answer to a question that he "made the annotation at the time, x x x, I don't know where the gun, but immediately after," is an admission that the annotation was made by Mr. Mabelin only after he received the letter of Judge Sañez. The annotation is not admissible for being self-serving.

On the other hand, your investigator does not entertain any doubt on the veracity of the testimony of Judge Villanueva. He answered all clarificatory questions clearly and without equivocation or hesitation. He cannot be faulted for buying the firearm in good faith. There is no evidence showing that Judge Villanueva had foreknown that the firearm that Mr. Mabelin offered to sell to him is a government property. Judge Villanueva asserted that he relied on the representation of Mr. Mabelin that the firearm is a loose firearm and, he is the owner of the said firearm.

As Acting Branch Clerk of Court, Mr. Mabelin received the COVINA firearm, Cal, 22 with Serial No. F-00797 when it was submitted in evidence by reason of the duties of his office. The firearm eventually became a government property after the decision has become final and executory. **Mr. Mabelin failed to produce the firearm after he received the letter of Judge Sañez. His failure to produce the firearm upon receipt of the letter of Judge Sañez is a prima facie evidence that appropriated the missing firearm to his personal use.**

In view of the foregoing, it is respectfully **recommended** that:

Atty. Jesus Orlando M. Quiñones be directed to file criminal complaint for Malversation of Government Property with the Office of the Ombudsman for Luzon and, an Administrative complaint for Dishonesty against Edgardo A. Mabelin, the Legal Reseacher of RTC Branch 14 in Ligao, Albay.

x x x (Emphasis and underscoring supplied.)

By Supreme Court Resolution dated August 25, 1998,<sup>[6]</sup> the case against respondent was treated as an **Administrative Complaint** for "Dishonesty and Incompetence in the Performance of Duty" and was docketed as ADM-98-1275, the subject of the present case.

In the meantime, by letter of September 8, 1999, the OCA referred the criminal aspect of the case to the Ombudsman for the filing of appropriate court proceeding against respondent. The case, docketed as OMB-1-98-1963, was, however, by November 10, 1999<sup>[7]</sup> Order of the Deputy Ombudsman for Luzon, closed and terminated in view of the fact that Atty. Quiñones, who was directed to file a formal complaint under oath against respondent, had ceased to be connected with the Ligao RTC (in 1999), hence, "the absence of a vital witness to warrant further proceedings."

In his **Comment** dated June 2, 2000,<sup>[8]</sup> respondent admits that while it was his duty to deliver the firearm to the proper authorities, he submits, however, there was no order issued to that effect by the trial court as provided for in the Manual for Clerks of Court; he transferred the custody of the firearm to Judge Villanueva in obedience to the order of a superior; there is no truth to the claims of Judge Villanueva who should be faulted for violation of the Canons of Professional and Judicial Ethics, the Code of Ethical Standards for public officials and employees, the