

EN BANC

[A. M. No. MTJ-01-1383 (Formerly AM-OCA-IPI-99-769-MTJ), March 05, 2003]

PERLITA AVANCENA, COMPLAINANT, VS. JUDGE RICARDO P. LIWANAG, MUNICIPAL TRIAL COURT, SAN JOSE DEL MONTE, BULACAN, RESPONDENT.

D E C I S I O N

PER CURIAM:

In a sworn Complaint dated August 23, 1999, Perlita Avancena charged Judge Ricardo P. Liwanag of the Municipal Trial Court (MTC) of San Jose del Monte, Bulacan with violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act,^[1] in connection with Criminal Cases Nos. 7258-97 and 7259-97 being heard by respondent.

Complainant alleged that: she is the accused in Criminal Cases Nos. 7258-97 and 7259-97 for violation of Batas Pambansa Blg. 22; on May 5, 1999, her counsel filed a "Motion to Postpone Promulgation and to Re-open Trial to Allow Accused to Present Further Evidence;" following the opposition filed by the prosecution and her reply thereto, respondent denied the motion on the ground that she was ably represented by counsel during the trial of the case; prior to the dismissal of her motion, respondent summoned her to his chamber where he told her that she will be convicted on May 7, 1999 unless she pays him the amount of One Million Pesos (P1,000,000.00); respondent assured her that he will take care of the fiscal and the private complainant; she refused to pay the amount since her unpaid balance was only One Hundred Forty Thousand Pesos (P140,000.00) and so, there is no reason for her to pay the One Million Pesos (P1,000,000.00) demanded; through a court personnel, respondent summoned her again and told her to raise only Five Hundred Thousand Pesos (P500,000.00) if she could not afford the One Million Pesos (P1,000,000.00) and the cases will be archived; prior to the hearing on July 2, 1999, respondent sent Raymunda Flores, a close friend of the judge and offended party in the criminal case, to her (complainant's) house; Flores told her that she was tasked by the respondent to bring her to his chamber but she refused; a certain Cora Española, Court Interpreter of the MTC, told her through the telephone that respondent would be waiting for her until 4:30 in the afternoon; when she called the respondent, the latter told her that if she did not give the amount of Five Hundred Thousand Pesos (P500,000.00), he would continue with the promulgation on July 12, 1999 and would not allow her to file any motion for bail unless she pays a fine of Four Hundred Thousand Pesos (P400,000.00).

In his Comment dated October 7, 1999, respondent claimed that: the presentation of the original copies of the check which was the subject of the earlier "Motion to Postpone Promulgation and to Reopen Trial to Allow Accused to Present Further Evidence" filed after the presentation and formal offer of evidence by the defense,

was deemed by the court as a mere dilatory move; it was not necessary because the defense had previous opportunities to compare the originals with the xerox copies which were marked when the prosecution presented its evidence; the claim of the complainant that he demanded One Million Pesos (P1,000,000.00) from her is a lie and a fabrication; he could not offer to take care of the fiscal or public prosecutor because the case had already reached the stage when the evidence of both parties have long been offered and could no longer be altered or recalled, much less withdrawn; it is unthinkable that he would demand such staggering amount of One Million Pesos (P1,000,000.00) through a court personnel because availing of such a conduct would be the height of irresponsibility; his alleged close friendship with Raymunda Flores is not true; he could not have conspired with his court interpreter to call the accused-complainant because that would have generated suspicion as the case had long been set for promulgation; the allegation that he had warned her that after promulgation and in the event of conviction, she would immediately be imprisoned without bail unless she paid a fine of Four Hundred Thousand Pesos (P400,000.00) is false because the accused was assisted by a competent counsel and therefore knows that there is a period of appeal and as long as the decision had not become final and executory, the accused is allowed to temporarily enjoy his or her freedom.^[2]

In a Resolution dated November 26, 2001, the case was re-docketed as Administrative Matter No. MTJ-01-1383 and referred to Executive Judge Oscar C. Herrera, Jr. of the Regional Trial Court (RTC) Malolos, Bulacan for investigation, report and recommendation.^[3]

Judge Herrera conducted lengthy hearings on the case. Complainant Perlita Avancena testified in support of her complaint while respondent testified on his defense. Thereafter, the administrative case was deemed submitted for decision.

Upon motion of complainant to re-open trial and to allow complainant to present rebuttal evidence,^[4] Judge Herrera re-opened the hearing.^[5] Joselito Guillen of the National Bureau of Investigation (NBI) testified on the entrapment operation conducted on respondent on the basis of a complaint of alleged extortion by herein complainant. Atty. Salvador C. Quimpo, counsel of complainant in the criminal cases before the respondent, corroborated the testimony of complainant on the occasion when respondent told them "ayusin na lang ang kasong ito" and showed to him a draft decision convicting complainant in the two criminal cases.

Respondent testified on sur-rebuttal denouncing the allegations of the complainant's additional witnesses as fabricated lies. Thereafter, the parties agreed to terminate the presentation of evidence.^[6]

In his Report, dated June 15, 2002, Judge Herrera gave more weight to the testimonies of complainant and her witnesses and concluded that the charges against respondent are true.

The following are the findings of fact and conclusions of Judge Herrera, quoted verbatim:

"The undersigned closely observed the conduct and demeanor of the complainant during the investigation. She was forthright and testified in a

spontaneous manner. Her declarations were clear, convincing and consistent with the averments in her verified complaint dated August 23, 1999 (Exh. 'A') filed with the Supreme Court. She claimed that the very first time she was summoned to the chamber of respondent judge prior to "the initial date set for promulgation of judgment, she was shown by respondent judge himself with a draft of the decision convicting her in the two (2) criminal cases in question. At one point, complainant nearly shed tears as she narrated that she was practically harassed and coerced by respondent judge into giving in to his demand, and that she was affected emotionally and psychologically by the intimidations of the respondent. Nothing in her demeanor indicated that she was fabricating a lie against respondent judge.

"The declarations of complainant find support in the testimonies of NBI Agent Joselito Guillen and Atty. Salvador Quimpo.

"NBI Agent Guillen testified that he prepared the marked money for an entrapment operation against respondent judge because of the complaint for extortion lodged by complainant. The operation was "actually carried out but it was unsuccessful because the judge had some visitors in his house when the pay-off was to be made by the complainant. The fact that a complaint for extortion was lodged against respondent judge and an actual entrapment operation was laid and carried out, albeit unsuccessful, lends credence to the charge made by complainant against respondent judge. There was no showing whatsoever that he was actuated by any improper motive in testifying against respondent judge.

"Atty. Quimpo, on the other hand, insisted that he was with complainant when summoned at one instance by the respondent in his chamber. He himself was shown by respondent judge with a draft of the decision saying 'ayusin na lang ang kasong ito'. Although it may be said that he is biased against respondent judge for the partially unfavorable decision rendered by the latter against Ms. Avancena, there is also no showing that he was actuated by any improper motive in testifying against the judge. A member of the bar in good standing, there was similarly nothing in his demeanor indicating that he was fabricating a lie against respondent judge.

"Upon the other hand, the denial of respondent judge and his claim that he is being harassed by complainant do not appear to be credible. His denial cannot prevail over the clear, straightforward and positive assertions of complainant. Respondent judge's contention that he could not have threatened to convict complainant in the two (2) criminal cases because his decision convicted her only in one case and acquitted her in the other, is specious and unacceptable.

"By respondent judge's own admission, the decision in Criminal Cases Nos. 7258-97 and 7259-98 was originally set for promulgation on May 7, 1999 but was eventually promulgated only on August 27, 1999, or almost four (4) months after the original schedule. While he attributes this to dilatory motions filed by complainant and counsel all of which he denied, the fact of the matter is that he could have proceeded with the