

## **FIRST DIVISION**

**[ A.M. No. RTJ-00-1590, January 15, 2002 ]**

**GINA B. ANG, COMPLAINANT, VS. JUDGE ENRIQUE B. ASIS,  
REGIONAL TRIAL COURT, BRANCH 16, NAVAL, BILIRAN,  
RESPONDENT.**

### **D E C I S I O N**

**YNARES-SANTIAGO, J.:**

In a Complaint-Affidavit dated April 7, 2000<sup>[1]</sup> filed with the Office of the Court Administrator, Gina B. Ang charged Judge Enrique C. Asis, Presiding Judge of Branch 16 of the Regional Trial Court of Naval, Biliran, with Bribery, Extortion and Violation of the Anti-Graft and Corrupt Practices Act relative to Election Case No. 98-01.

Complainant alleged that she filed with respondent's court an election protest against her opponent, Caridad Atok, who was declared mayor of Kawayan, Biliran in the May 1998 election. Sometime in October 1998, while her election protest was pending, respondent allegedly intimated to complainant's lawyers that he will decide the case in complainant's favor in exchange for monetary consideration. Without her knowledge, complainant's father delivered to respondent the total amount of P140,000.00 on three occasions in October 1998, January 1999, and April 1999.

Sometime in December 1998, complainant was told by her lawyers that respondent had requested assistance in the promotion of his brother, then Examiner II at the Bureau of Customs, through complainant's cousin, Atty. Ramon Salazar, Jr., who was the Chief of Staff of the Customs Commissioner. Complainant refused but, unbeknown to her, her family immediately contacted her cousin and respondent's brother was soon promoted.

Complainant had earlier planned to file an administrative complaint against respondent for his failure to resolve her election protest within sixty days from the time it was deemed submitted for decision, but her lawyers told her to wait. Subsequently, complainant learned that respondent had requested that his son be admitted for training at the Philippine Heart Center. Complainant refused as she might be misinterpreted as extending any assistance to respondent in order to obtain a favorable decision. Nevertheless, she acceded to her lawyers' request to bring respondent's son to Manila and even paid for the latter's plane fare and accommodation until his application was granted by the Philippine Heart Center.

In January 2000, complainant allegedly received a call from respondent telling her that his son needed P4,000.00 for his training. Thinking that this was a request for a loan, she agreed. Since she did not have cash at the time, she asked her friend to give a check to respondent's son.

On March 14, 2000, respondent rendered his decision in the election protest

declaring Caridad Atok winner in the mayoralty race.

Respondent filed his Comment.<sup>[2]</sup> He vehemently denied the charges of complainant and instead, he cited various citations he received as a member of the Judiciary of Biliran because of his integrity. He denied having solicited help from Atty. Salazar for the promotion of his brother at the Bureau of Customs. Rather, his brother's promotion was through the recommendation of his superiors and of Mayor Jinggoy Estrada of San Juan.

Respondent also denied that he asked complainant to help his son, Enrique, Jr., in his application for training at the Philippine Heart Center. He alleged that his son went to Manila to apply for work at the Heart Center upon the advice of a family friend. While in Manila, his son stayed with his uncle, Nestorio Asis, who works at the Bureau of Customs.

Respondent alleged that his son was prepared to pay for training fees in cash but that he suddenly received a check for P4,000.00 from complainant's friend.

Finally, respondent surmised that complainant filed the charges against him out of spite for losing her election protest and because her appeal was dismissed for non-payment of docket fees.

The instant case was referred to Court of Appeals Associate Justice Perlita Tria-Tirona for investigation, report and recommendation.<sup>[3]</sup>

On September 17, 2001, Justice Tirona recommended that the charges for bribery and extortion be dismissed; that respondent be given a severe reprimand with the admonition to be more diligent in the adjudication of his cases and to be scrupulous in the observance of periods fixed by law. Justice Tirona based these on the following disquisitions:

From the affidavit-complaint of the complainant, it will be noted that all the charges of complainant are based on informations (*sic*) allegedly given or passed on to her by her lawyers. Complainant's lawyers in her electoral protest filed in the sala of respondent Judge Asis were Attorneys Lee and Matriano.

However, complainant did not present any of these lawyers, Attys. Lee or Matriano to corroborate her allegations that they, Attys. Lee and Matriano were approached by respondent "intimating" that for a consideration her will render a favorable decision for complainant in the electoral protest.

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As regards complainant's second charge against respondent that respondent sought complainant's help in connection with the promotion of respondent's brother who was then employed with the Bureau of Customs because respondent allegedly learned that complainant's cousin Atty. Ramon Salazar was then the Chief of Staff of then Customs Commissioner Nelson Tan, complainant was again just told about it by her lawyers. According to complainant, her initial reaction when she was told about it by her lawyers was "like before because according to her

she did not like it to appear that she was buying a favorable decision.” But, she said that when his family learned about it, they lost no time in contacting her cousin Atty. Salazar.

However, no evidence was presented by complainant that indeed respondent sought her assistance in connection with his brother’s promotion neither was it shown that respondent’s brother was promoted because of Atty. Salazar. On the contrary, it was shown by respondent that his brother was promoted through the help of Jinggoy Estrada among others. Besides, how influential was Atty. Salazar to be able to work for respondent’s brother? This was never shown by complainant.

Anent the charge that respondent sought the help of complainant in connection with the application of respondent’s son Enrique, Jr. who is a registered nurse, at the Philippine Heart Center, complainant again admitted that she was just informed about it. In other words, respondent did not talk to complainant about this. According to complainant, respondent called her up. Again complainant was not able to prove this allegation.

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While the check for P4,000.00 made by complainant’s witness Melba Buenvenida was indeed paid to the Heart Center and signed at the back of the check by respondent’s son, this does not prove that respondent himself was the one who solicited the amount from complainant.

Complainant, in her effort to pin down respondent on the charges filed by her against him presented pictures of the house of respondent in Barugo which respondent does not deny, and according to complainant said residence is not worth P400,000.00 but much more and complainant concludes that respondent resorted to the acts complained of in order to finish the construction of respondent’s house in Barugo. Complainant further claims that the house of respondent can be estimated to be worth 2 to 3 million.

We are not impressed by said argument of the complainant. The fact alone that respondent had the house constructed does not prove that the charges of complainant for bribery/extortion, etc. are true.  
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Regarding the charge for violation of the Anti-Graft Law (RA 3019, as amended) in relation to the electoral protest case filed by the complainant, the records show that the electoral protest case was filed in May 1998. The case was finally decided by respondent on March 14, 2000.

However, while there was undoubtedly a delay in the disposition of said case, the records also show that the parties contributed to the delay. xxx xxx xxx.

But while this will not totally exonerate the respondent from any

administrative liability for the delay, if at all, it may mitigate his liability. Needless to state, a judge should at all times, remain in full control of the proceedings in his sala and should adopt a firm policy against improvident postponements – more importantly he should follow the time limits set for deciding cases.<sup>[4]</sup>

The Court finds the recommendation of Justice Tirona well-taken.

Anent the charges of Bribery, Extortion and Violation of the Anti-Graft Law, this Court has often held that in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are generally not subject to disciplinary action, even though such acts are erroneous.<sup>[5]</sup> In *Santos v. Judge Orlino*,<sup>[6]</sup> it was held:

Existing doctrine is that judges are not liable for what they do in the exercise of their judicial functions when acting within their legal powers and jurisdiction. Certain it is that a judge may not be held administratively accountable for every erroneous order or decision he renders. To hold otherwise would render judicial office untenable for no one called upon to try the fact or interpret the law in the process of administering justice can be infallible in his judgment. The error must be gross or patent, deliberate and malicious or incurred with evident bad faith.

Stated succinctly, for administrative liability to attach it must be established that respondent was moved by bad faith, dishonesty, hatred or some other motive.<sup>[7]</sup> Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud.<sup>[8]</sup> It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes.<sup>[9]</sup> Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.<sup>[10]</sup>

In the case at bar, the record does not show that respondent judge was moved by ill-will or bad faith in rendering the adverse judgment, or that his ruling was manifestly unjust. Complainant has not, in fact, adduced any proof to show that impropriety attended the issuance of the subject decision. To reiterate, bad faith is not presumed and he who alleges the same has the *onus* of proving it.<sup>[11]</sup> In view of the fact that complainant relied mainly on second-hand information to prove her charges, her complaint is reduced into a bare indictment or mere speculation.

Concededly, administrative proceedings are not strictly bound by formal rules on evidence. However, the liberality of procedure in administrative actions is still subject to limitations imposed by the fundamental requirement of due process. Indeed, the Rules, even in an administrative case, demand that if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge.<sup>[12]</sup> The judiciary to which respondent belongs demands no less. Before any of its members could be faulted, competent evidence should be presented, especially since the charge is penal in character.<sup>[13]</sup>