

EN BANC

[A.M. No. MTJ-99-1188 (formerly OCA IPI No. 98-602-MTJ), July 02, 2001]

JOSE E. GURAY, COMPLAINANT, VS. JUDGE FABIAN M. BAUTISTA, MUNICIPAL TRIAL COURT, BALAOAN, LA UNION, RESPONDENT.

DECISION

PER CURIAM:

In a letter-complaint^[1] received by the Office of the Court administrator on April 15, 1998, complainant Jose E. Guray charged respondent Judge Fabian M. Bautista with violation of R.A. No. 3019, the Anti-Graft and Corrupt Practices Act, for allegedly extorting money from him in relation to a criminal case pending before respondent judge's sala. Complainant asks that respondent be disbarred and dismissed from the service.

From the records, it appears that complainant is the private complainant in Criminal Case No.2092, pending before respondent judge's sala in Luna, La Union.^[2] This case involves complainant's 11-year-old son Eugenser who was hit in the eye by a stone thrown by one Edmar Nebrida. Eugenser went blind, and Edmar, sometime in January 1998, was consequently charged with serious physical injuries. Complainant moved to upgrade the charge to frustrated murder, alleging that his son could have died from his injury had he not received timely medical attention.

On March 16, 1998, respondent judge met with complainant in his courtroom. He allegedly agreed to upgrade the charge, but for a consideration of P5,000.00,^[3] payable within a week. Complainant reported the matter to the NBI the following day. He told the NBI that he did not hold a grudge against respondent judge, but he wanted to put a stop to the latter's extortion schemes, particularly since he had been hearing about such activities from other people.

The NBI prepared an entrapment operation against respondent judge. Complainant produced several money bills amounting to P4,000.00 which the NBI marked with invisible crayon and dusted with fluorescent powder.^[4] The original plan was to entrap respondent judge on March 25, 1998, but he was not in his office at that time.

Finally, on March 30, 1998, complainant met respondent judge at the parking lot of the Balaoan municipal hall and told him that he already had the money. Complainant gave the money to respondent judge who pocketed it immediately. NBI agents then arrested respondent judge and brought him to the provincial prosecutor's office for inquest. At the NBI office, respondent judge refused to submit to tests to determine the presence of fluorescent powder on his hands.

On March 31, 1998, respondent judge was charged with violation of Section 3(e) of R.A. 3019 before the Regional Trial Court, Balaoan, La Union.^[5] On October 7, 1998, respondent judge was also charged before the Sandiganbayan with direct bribery under Article 210 of the Revised Penal Code.^[6]

On February 24, 1999, we required respondent judge to comment on the administrative complaint against him.

In a letter dated June 7, 1999, respondent judge stated that the charges against him are untrue. He added that he would not sacrifice his position for a mere pittance that is only equivalent to his monthly representation and transportation allowance. He refused to further comment on the merits of the complaint, saying that he did not want to reveal his defense to complainant who should prove his case through his own evidence. Respondent judge asked, instead, that the complaint be dismissed since the RTC had earlier dismissed the criminal complaint against him for violation of R.A. 3019, upon motion of the prosecution.^[7] He cited as authority our ruling in the case of *Llorente, Jr. v. Sandiganbayan*, 287 SCRA 382 (1998), which was also cited in the order of the RTC dismissing the case.^[8]

On November 17, 1999, we directed the court administrator to refer this case to any of the OCA consultants for investigation, report, and recommendation.

On March 13, 2000, while the OCA's investigation into this case was ongoing, complainant filed an affidavit of desistance.^[9] He made a complete turnaround and claimed that respondent judge never demanded money from him in exchange for a favorable resolution of the motion to charge the proper offense that complainant had earlier filed in connection with Criminal Case No. 2092, involving his son. According to complainant, what actually happened was that he went to the courtroom of respondent judge to inquire about the status of his motion. While there, he overheard respondent judge borrowing P5,000.00 from his clerk of court and saying that he badly needed the money. Respondent was, however, told that his clerk of court did not have any money.

When complainant inquired about the status of his motion, respondent judge told him he had not yet acted on it due to the volume of work he was handling. Respondent judge told complainant to come back on March 25, 1998, since he might have the resolution ready by then.

Complainant allegedly mistook this series of exchanges as respondent judge's subtle way of asking him for money. Because he disliked the idea, he reported the matter the next day to the NBI. An entrapment operation against respondent judge was, thus, laid out for March 25, 1998 when complainant was supposed to return to respondent's courtroom. The operation was reset to March 30, 1998 when respondent judge did not appear on March 25.

Complainant stated in his affidavit of desistance that on March 30, 1998, he met respondent judge at the parking lot of the municipal hall of Balaoan, La Union, as the latter was about to go to his courtroom. Respondent judge invited complainant to go inside with him but the latter refused, having in mind the entrapment plan set against respondent judge. Instead, complainant told respondent judge that he was in a hurry and asked if they could talk at the parking lot instead. Respondent judge

agreed. Complainant then inquired about the status of his motion and respondent judge replied that the resolution was not yet ready since he still did not have time to attend to it. At this point, complainant gave a signal to the NBI agents who were watching nearby, then immediately placed the marked money inside respondent judge's pocket. He told the latter more money was coming. Respondent judge reached into his pocket, saying "*teka, teka* (wait, wait)", but it was then that the NBI agents pounced upon him and arrested him.

Also in his affidavit of desistance, complainant narrated that after administrative and criminal cases were filed against respondent judge, the latter continued pleading with him, through emissaries, to file an affidavit of desistance since it was not true that he was demanding money from complainant.

Complainant said he was bothered by his conscience since, indeed, respondent judge did not ask money from him directly. He only thought that respondent judge was asking for money when he overheard the latter borrowing money from his clerk of court. Complainant added that respondent judge did not personally receive the marked money on March 30, 1998. Instead, it was he who placed it in respondent judge's pocket. Respondent judge reached into his pocket to get the money and return it to complainant, but NBI agents immediately nabbed him.

Complainant stated that he was no longer interested in pursuing the charges against respondent judge, and that he believed the latter to be innocent of such charges. Complainant said he would no longer testify against respondent judge and asked that the cases against the latter be dismissed.

During one of the hearings conducted by the OCA, complainant also declared that he mistakenly assumed that respondent judge was demanding money from him.^[10]

In its report dated May 15, 2000 and received by this Court on May 19, 2000, the OCA stated that complainant's earlier affidavit charging respondent with extortion "has a better ring of truth"^[11] than the affidavit of desistance that he later executed. Complainant was unequivocal in his earlier affidavit, where he clearly stated that respondent had demanded money from him in exchange for favorable action on his motion, to be paid within a week. On the other hand, complainant's statement in the latter affidavit, that he overheard respondent judge borrowing money from his clerk of court and mistook it as a demand for money from him, is too contrived to inspire belief, according to the OCA.

The OCA pointed out that recantations or retractions by witnesses are rarely given probative value, since they can easily be obtained through intimidation or for a consideration. The OCA surmised that complainant executed an affidavit of desistance to obtain a favorable ruling in the criminal case involving his son, which was still pending in respondent judge's sala at the time of the investigation.

The OCA recommended that respondent judge be dismissed from the service, with forfeiture of all benefits and with prejudice to reemployment in any government branch or instrumentality. It likewise recommended that complainant be investigated and prosecuted for perjury or such other crime as the evidence may warrant.