

EN BANC

[A.M. No. RTJ-95-1308, April 12, 2000]

EVELYN AGPALASIN, COMPLAINANT, VS. JUDGE EMERITO M. AGCAOILI, RESPONDENT.

R E S O L U T I O N

PER CURIAM:

This treats of the administrative case against Judge Emerito Agcaoili of Branch 9 of the Regional Trial Court of Aparri, Cagayan.

The antecedents of this case are summarized by the Investigating Justice as follows:

Respondent filed a complaint-affidavit dated September 4, 1992 for estafa at the Municipal Trial Court (MTC) of Aparri against complainant for allegedly shortchanging him of 200 nipa shingles from [the] 5,500 he had purchased from her on May 8, 1991 which he fully paid on May 21, 1991.

Answering the estafa charge against her, complainant filed her Counter-affidavit wherein she not only denied the same but also charged respondent with the following offenses:

- (a) falsification under Article 172, paragraph 1, of the Revised Penal Code for allegedly making an untruthful statement in the affidavit-complaint which became the basis for the charge of estafa in the aforestated criminal case;
- (b) incriminating an innocent person under Article 363 of the same code for allegedly maliciously accusing complainant of estafa; and
- (c) violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) for ordering or allowing a man with a pending criminal case before him ([whom] he eventually acquitted) to receive, transport and pay for the fare of the 5,500 shingles of nipa ordered by him from complainant and for allegedly constructing illegally a poultry within the compound of Cagayan State University which is a government property.

A copy of complainant's said counter-affidavit to the estafa charge was sent by her to the Cagayan Provincial Prosecutor's Office with the request that a preliminary investigation of her charges against respondent be conducted.

A three-man panel of deputized Ombudsman Prosecutors was designated

to conduct an investigation of complainant's charges. After initially investigating the charges, the three members of the panel inhibited themselves from further proceeding with the investigation, giving as reason therefor the fact that one of their colleagues at the Cagayan Provincial Prosecutor's Office, Asst. Provincial Prosecutor Apolinario Carrao, had filed administrative charges against respondent at the Supreme Court.

The Cagayan Provincial Prosecutor's Office thus referred the complaint to the Office of the Ombudsman for the conduct of the preliminary investigation.

After investigation, the Office of the Ombudsman found that a determination of whether or not the affidavit-complaint of herein respondent in the estafa case is falsified was still premature and thus held in abeyance any action on the criminal aspect of the case against him until after the termination of the estafa case. It, however, referred the record of the case to the Office of the Court Administrator for appropriate administrative action.^[1]

In a Resolution, dated June 26, 1996,^[2] the Court referred the case to Justice Conchita Carpio-Morales of the Court of Appeals for investigation, report and recommendation. Respondent Judge is charged with:

- (a) ordering or allowing the accused in Criminal Case No. 09-594 to receive, transport and pay the fare for 5,500 nipa shingles for respondent Judge's benefit and subsequently acquitting the accused therein; and
- (b) illegally constructing a poultry within the compound of the Cagayan State University, a government property located at Carig, Tuguegarao, Cagayan.^[3]

The Court received Justice Carpio-Morales' Report on May 21, 1998. Justice Carpio-Morales summarized the evidence for both the complainant and respondent Judge, thus:

EVIDENCE FOR COMPLAINANT

x x x

In early May 1991, while complainant was tending her business selling nipa shingles at a landing site near Branch 9 of RTC Aparri, Cagayan, a male employee of respondent approached her informing her that respondent wanted to purchase nipa shingles from her to be used in the construction of respondent's poultry house inside the Cagayan State University (CSU) in Carig, Tuguegarao, Cagayan. She thereupon went to the CSU to estimate the number of shingles needed for the poultry house. She then conveyed to respondent that 5,500 shingles were needed and respondent approved it and agreed to buy them at a discounted price of P70.00 per hundred [shingles] payable upon segregation, freight on board Aparri, Cagayan.

Complainant and her salesman/helper Vicente Umengan (Umengan) thus segregated 5,500 nipa shingles in the presence of respondent's male representative.

On May 10, 1991, respondent, through RTC Branch 9 stenographer Violeta Bigayan (Violeta), gave two P500.00 bills or a total of P1,000.00 as advance payment to complainant's employee Umengan, complainant not being then around.

On May 11, 1991, a Saturday, complainant together with Umengan went to respondent's chambers to collect the balance of the purchase price and [to] advise him to pick up the nipa shingles as the owner of the compound where they were temporarily stacked-up was already complaining. [Inside] respondent's chambers, complainant was introduced by respondent to Sixto Bumatay (Bumatay) who was then facing trial for robbery along with five others before respondent's court, and to Bumatay's counsel Atty. Juan Antonio (Atty. Antonio). Complainant was then instructed to deliver the nipa shingles to either of the two men with the advice that Bumatay would take charge of the payment of the balance of the purchase price.

In the morning of May 13, 1991, upon her return from Pangasinan, complainant called for an FC, Liner minibus and loaded the nipa shingles in the presence of Bumatay. While the loading was in progress, Atty. Antonio and Umengan arrived. Atty. Antonio, however, let before the loading was finished as Bumatay assured him that he would take care of everything. After the loading was finished, Bumatay handed to complainant P385.00 representing the freight charges of the nipa shingles which she in turn gave to the driver of the bus. Complainant then asked about the balance of the purchase price, and Bumatay replied that respondent himself would pay it upon delivery of the nipa shingles at the CSU compound in Tuguegarao.

In view of that development, complainant instructed her secretary Arsenia Casilian. (Arsenia) to personally deliver the nipa shingles at the CSU compound at Tuguegarao and collect the balance of the purchase price amounting to P2,850.00 from respondent.

Upon arriving at the CSU compound, the nipa shingles were unloaded in the presence of respondent and a man who assisted in the unloading. Respondent then issued a Metrobank (Tuguegarao Branch) check for P2,850.00 to Arsenia who gave it to complainant upon returning to Aparri. The check, however, when presented for-payment, was dishonored due to insufficiency of funds, and on redeposit, it was just the same dishonored for the same reason.

On May 21, 1991, complainant went to respondent's office to inform him of the dishonor of the check (Respondent admitted that this check was dishonored). x x x. Respondent immediately issued another check, Land Bank (Tuguegarao Branch) Check No. 1743842, for the same amount. On the same occasion, respondent ordered additional 2,300 nipa shingles x x

x at P90.00 per hundred from complainant partial advance payment for which he issued another Metrobank (Aparri Branch) check in the amount of P1,600.00.

In the morning of May 25, 1991, complainant shipped from Aparri, Cagayan 8,500 nipa shingles to Tuguegarao, Cagayan via a Malamug Trans bus with instruction to its driver, Benedict Cosme Malamug (Malamug), to unload 2,300 thereof at the poultry house of respondent inside the CSU compound and to collect from respondent the corresponding fare and the balance of the purchase price of the nipa shingles.

After several days, an employee of respondent went to complainant and asked her why she had not yet delivered the second order of 2,300 nipa shingles. This drew complainant to confront Malamug who told her that the nipa shingles were not unloaded at the CSU compound as nobody there wanted to receive the same and pay for the corresponding fare, hence, the entire batch of 8,500 nipa shingles was unloaded at the yard of one Freddie Llanto. Complainant thus caused the immediate delivery of the 2,300 nipa shingles to respondent.

More than one month after the delivery, of the 5,500 shingles or on June 25, 1991, complainant was summoned by respondent to his chambers where he berated her for shortchanging him, so he alleged, of 200 nipa shingles out of the said order of 5,500. Jolted, complainant tried to explain her side but respondent did not [give] her a chance and bragged that he could easily put her in jail. Certain that she did not defraud respondent, complainant challenged him to sue her in court.

It occurred to complainant to inquire about the second shipment for 2,300 shingles from Malamug who explained that the caretaker of the poultry house of respondent could not pay for the freight charges and the balance of the purchase price therefor, hence, he unloaded only 1,600 shingles and retained the rest. In the meantime, respondent rendered a decision in Criminal Case No. 09-594 dated August 9, 1991 acquitting Bumatay and his co-accused upon a finding that their guilt was not proven beyond reasonable doubt.

Almost four (4) months from the date of delivery of the 5,500 shingles ordered by respondent or on September 10, 1991, respondent filed a case for estafa against complainant before the MTC of Aparri, Cagayan arising from the alleged shortchanging of 200 shingles.

In a decision dated June 16, 1993, the MTC of Aparri acquitted complainant of estafa.

EVIDENCE FOR RESPONDENT:

RESPONDENT'S testimony goes:

Anent the first charge, the same is not true for it is his policy as a judge not to ask any favor from anybody as he knows that it would have to be

repaid with another favor.

Anent the alleged meeting at his chambers on May 11, 1991 during which he introduced Bumatay and Atty. Antonio to complainant and told her that Bumatay or Atty. Antonio would pay for the fare of the 5,500 nipa shingles, the same is not also true as it has been his policy since his appointment in 1990 not to allow the entry of, summon or talk with any litigant or his lawyer inside his chambers without the presence of the other party. Besides, May 11, 1991 fell on a Saturday and was Aparri's town fiesta and he could not have been in his office on that day as he goes to his residence which is "not far from Aparri" every weekend.

Moreover, he never had any conversation with complainant except during that only instance when he demanded from her the delivery of the 200 nipa shingles which occurred only sometime "after May 11, 1991, or May 13 or May 15".

He did not know about the participation of Bumatay and/or Atty. Antonio in the shipping of the nipa shingles to Tuguegarao although he later came to know about Atty. Antonio's participation when he asked stenographer Violeta several days after May 13, 1991 what happened to the nipa shingles to which she informed that it was Atty. Antonio who paid in advance for the freight charges therefor. Thus informed, he immediately issued a Pay to Cash Metrobank (Aparri Branch) check in the amount of P530.00 and handed it to Violeta for delivery to Atty. Antonio representing reimbursement of the freight charges, which amount was arrived at by him by estimating the freight charges to be at ten (P.10) centavos per shingles (TSN July 16, 1996, p. 24).

His acquittal of Bumatay in the robbery case was due to the prosecution's failure to prove the guilt of Bumatay beyond reasonable doubt and not as insinuated in the complaint.

Anent the second charge, there is nothing wrong in the construction of the poultry house inside the compound of the CSU as the same is covered by a Memorandum of Agreement (Exhibit "4") executed by and between his wife, Mrs. Norma Agcaoili, and CSU's President, Dr. Armando B. Cortes, which agreement was duly ratified by the University's Board of Regents.

To corroborate part of his testimony, respondent presented stenographer Violeta, Atty. Juan Antonio, retired Judge Felipe Tumakder, and Dominador Tamayao whose respective testimonies follow after their names.

VIOLETA BIGAYAN-TORIDA, Court Stenographer III of Branch 9, RTC Aparri, Cagayan:

On May 13, 1991, while she was at the nipa shingles landing site following the directive of respondent for her to look for a vehicle to ship the nipa shingles bought by Mrs. Agcaoili at Aparri to their poultry house in Tuguegarao, she saw Atty. Antonio whose help for the purpose she