

## EN BANC

[ **A.M. No. 93-9-1237-RTC, August 21, 1997** ]

**RE: LOSS OF COURT EXHIBITS AT RTC, BR. 136, MAKATI CITY.**

### D E C I S I O N

**PADILLA, J.:**

In a letter dated 20 August 1993, Judge Jose R. Bautista of the Regional Trial Court, Branch 136, Makati, forwarded to then Court Administrator Ernani Cruz-Paño the letter dated 16 August 1993 of Atty. Cynthia H. Marmita, Branch Clerk of Court, reporting the loss of court exhibits in several criminal cases filed with said court, consisting of eleven (11) different short firearms and ammunitions of various calibers.

In her letter-report, Atty. Marmita averred that she discovered the loss on 14 August 1993 when she, assisted by three (3) other court personnel, was conducting an inventory of the exhibits, fixtures, books and furniture of said court for the purpose of turning them over to Judge Bautista, the new presiding judge. The exhibits were missing from the steel cabinet where they were kept while the other things left inside the steel cabinet were disarray. Atty. Marmita noted that the steel cabinet showed no sign that it had been forcibly opened as the lock remained intact. In fact, Atty. Marmita even used the key when she opened the steel cabinet on 14 August 1993.

Upon receipt of Atty. Marmita's report on 17 August 1993, Judge Bautista forthwith directed her to report the matter to the Station Commander of the PNP Makati Police Force and to furnish him (Judge Bautista) with a report on the status of the criminal cases to which the missing exhibits pertained. Judge also ordered the transfer of the steel cabinet from the courtroom to the room adjacent to his chambers and the reinforcement of the padlocks and steel contraptions attached to the doors of the court to prevent possible break-ins.

On 3 September 1993, Atty. Marmita submitted to Judge Bautista a supplemental report informing the latter of additional missing exhibits consisting of one (1) firearm and several personal effects. A total of twelve (12) short firearms were reported missing. Judge Bautista forwarded the supplemental report of Atty. Marmita to the Office of the Court Administrator on 9 September 1993.

Acting on the letters of Judge Bautista, the OCA treated them as an Administrative Matter and submitted to the Court for its consideration the following recommendations:

- "a) That the National Bureau of Investigation (NBI) be DIRECTED to conduct a formal investigation into the matter and to submit its report thereon with utmost dispatch; and b) that Br. Clerk of Court Cynthia Marmita be DIRECTED: 1) to notify the parties concerned of the loss of the aforestated exhibits; 2) to report the matter to the Explosives

Division, Camp Crame, Quezon City and if a copy of the police report on the matter is already available to furnish the said office with a copy of the same; and 3) to submit a report thereon to this court within ten (10) days from compliance herewith.”

On 21 September 1993, the Court issued a Resolution adopting the foregoing recommendations of the OCA.

In her Compliance dated 5 January 1994, Atty. Marmita reported to the Court that she had already notified the parties concerned that the exhibits, particularly, the firearms and ammunitions, which were used as evidence in their respective cases were missing. Atty. Marmita likewise reported that the Chief of the Firearms and Explosives Division, Camp Crame, Quezon City, had already been informed about the missing exhibits.

On 1 August 1995, Atty. Marmita filed with the Court a Motion for Early Resolution of the present Administrative Matter. Atty. Marmita informed the Court that she had applied for optional retirement from the government service some time in September 1994 but her certificate of clearance for said retirement was withheld from her pending the outcome of the investigation conducted by the NBI in this Administrative Matter.

Acting on Atty. Marmita’s motion, the Court issued a Resolution dated 22 August 1995 requiring the NBI to comply with the Court’s earlier Resolution of 21 September 1993 which directed said office to conduct a formal investigation into the loss of court exhibits and to submit a report upon compliance therewith.

On 20 August 1996, NBI Director Santiago Y. Toledo submitted to the Court the report of his office stating that:

“Regretfully, Investigation of instant case yielded negative results. No evidence or material information was gathered to established or indicate the indentity/ies of the person/s responsible for the loss of court exhibits (eleven [should be twelve] different firearms and ammunitions) at the RTC, Branch 136, Makati City.”

Attached to the aforesaid report was the written report of the NBI agents who conducted the investigation. The NBI agents revealed that a certain Alfonso Nieva alias “Jun”, husband of Vilma Gammad, a former casual employee of the court, had been heard by other court employees to have offered to sell firearms to the husband of Zenaida Agpaua, also a casual employee of the Court. Mila Acanto, a court employee, also claimed that in one instance, she saw a live bullet fall from the white canvas bag of Zenaida. Atty. Marmita, on the other hand, recalled having seen Jun carrying a white canvass bag which appeared to contain something heavy. Nino Juanico, process server of said court, also claimed that on several occasions, he noticed Jun alone inside the courtroom and he (Juanico) thought this to be odd since Jun had no business being there. Despite said findings, the NBI agents concluded in their report that:

“7. IRD Records show derogatory information against ALFONSO NIEVA while there is none ATTY. CYNTHIA MARMITA.