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EN BANC

[A.M. No. P-1279. August 9, 1977]

AQUILINO ENCARNACION, *complainant, vs.* **CRISPIN I. PERALTA,** *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; PROVINCIAL SHERIFF; A CHARGE OF GRAFT AND CORRUPTION AGAINST HIM MUST BE ESTABLISHED BY CONVINCING EVIDENCE; CASE AT BAR.— There appears to be no sufficient evidence to support the allegation that Respondent received P60.00 from Complainant. The testimony of the Cashier of the hacienda shows that Complainant had asked from him ₱60.00 *before said Complainant went to the Garden Restaurant,* alleging that the ₱60.00 would be given to Respondent as initial payment of the P200.00 demanded by the latter. However, Complainant's own testimony shows that Respondent demanded from him ₱200.00 *in the Garden Restaurant.* This is corroborated by Complainant's witness, Jaime Baldovia who testified that while they were eating in the Garden Restaurant Respondent told Complainant to give him ₱200.00 'because he had no money because if he will be given that amount he will not take any more the jeep.' "If so, how did Complainant know beforehand that Respondent would demand from him ₱200.00 in the Garden Restaurant? How did Complainant know that he would be giving ₱60.00 to Respondent as initial payment of the ₱200.00 demanded in the Garden Restaurant before he dined with Respondent? How could he foretell these in advance? "Receiving bribe-money is a serious offense. The same should be convincingly established. In the instant case there is absence of strong evidence of such fact."

RESOLUTION

CONCEPCION, JR., *J.*:

On April 21, 1976, Aquilino Encarnacion, barangay captain of barrio Sagurong, Pili, Camarines Sur, farm manager of

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Hacienda Sta. Rita, and attorney-in-fact of former Congressman Apolonio Marasigan, [1] filed a sworn complaint with the Secretary of Justice, charging Crispin I. Peralta, a deputy provincial sheriff of Camarines Sur with (1) graft and corruption, and (2) ignorance of the law, gross inefficiency and abuse of authority.[2] The said complaint was forwarded to this Court by the Secretary of Justice, and on September 30, 1976, the Court, sitting *en banc*, dismissed the charge for ignorance of the law, inefficiency and abuse of authority for being premature, and referred the charge for graft and corruption against the respondent sheriff to the Executive Judge of Camarines Sur for investigation, report and recommendation.[3]

After hearing the parties, the Executive Judge submitted a report of his investigation and recommended that the case be dropped and considered closed since "There is no appreciable evidence to show that respondent sheriff received ₱60.00 from the complainant Aquilino Encarnacion; the petty cash voucher (Exhibit A) is self-serving; the testimony of the witness Simeon Hernandez has no evidentiary value; the alleged eye-witness to the alleged giving by Encarnacion of ₱60.00 to respondent came from a biased and a coached witness," and that the complaint against the respondent sheriff is "merely retaliatory — a revenge taken by the farm manager Encarnacion against the sheriff of the province."[4]

The Acting Judicial Consultant likewise recommends the dismissal of the charge for insufficiency of evidence.[5]

It appears that in RO6 WCU Case No. A-104 of the Workmen's Compensation Unit of the Department of Labor, entitled, "*Carmen Vda. de Marasigan, claimant, versus*

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[1] Exh. J, p. 67, *Rollo*.

[2] *Rollo*, p. 1.

[3] *Id.*, pp. 39-40.

[4] *Id.*, pp. 52-53.

[5] *Id.*, p. 191.

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Hacienda Sta. Rita," the Hacienda Sta. Rita was adjudged to pay the claimant the amount of ₱5,600.00. When the Hacienda Sta. Rita failed to satisfy the award, a writ of execution was issued to enforce the judgment. Respondent deputy sheriff Crispin I. Peralta subsequently levied upon a jeep with the markings "Hacienda Sta. Rita" by virtue of the said writ of execution.

Former Congressman Apolonio V. Marasigan, claiming sole ownership of the jeep, filed a third-party claim with the respondent deputy provincial sheriff which the latter denied, resulting in the filing of Civil Case No. P-437 of the Court of First Instance of Camarines Sur, entitled, "*Apolonio V. Marasigan vs. Carmen Vda. de Marasigan, et al.*" The case is still pending consideration in the court below.

The charge for graft and corruption was allegedly committed, as follows:

". . . That on or about January 24, 1976 while Crispin I. Peralta, and I (complainant) were taking snacks at the Garden Restaurant at Naga City, Penalta proposed that he will not pursue the levy on the passenger jeep if he (Encarnacion) would give him (Peralta) Two Hundred Pesos, but I was able to give him only ₱60.00. That few days previous to February 12, 1976, Peralta went to see me and requested for the balance of ₱140.00 which I was not able to give as I did not have the money, besides former Congressman Marasigan refused to give me the money for the purpose. In the afternoon of February 12, 1976 while the jeepney was parked by me as I was near the capitol building while conferring with Atty. Reynaldo Borja at the Provincial Capitol, Naga City, Peralta levied upon and confiscated the jeepney."[6]

In recommending the dismissal of the foregoing charges, the Acting Judicial Consultant found that there is no sufficient evidence to support the allegations. He stated:

"Indeed, there appears to be no sufficient evidence to support the allegation that Respondent received ₱60.00 from Complainant. The testimony of the Cashier of the hacienda shows that Complainant had asked from him ₱60.00 *before said Complainant went to the*

[6] *Rollo*, p. 1.

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Garden Restaurant, alleging that the ₱60.00 would be given to Respondent as initial payment of the ₱200.00 demanded by the latter. However, Complainant's own testimony (TSN, October 28, 1976, p. 5) shows that Respondent demanded from him ₱200.00 *in the Garden Restaurant*. This is corroborated by Complainant's witness, Jaime Baldovia who testified that while they were eating in the Garden Restaurant Respondent told Complainant to give him ₱200.00 'because he had no money because if he will be given that amount he will not take any more the jeep.' (TSN, November 4, 1976, p. 5).

"If so, how did Complainant know beforehand that Respondent would demand from him ₱200.00 in the Garden Restaurant? How did Complainant know that he would be giving ₱60.00 to Respondent as initial payment of the ₱200.00 demanded in the Garden Restaurant before he dined with Respondent? How could he foretell these in advance?

"Receiving bribe-money is a serious offense. The same should be convincingly established. In the instant case there is absence of strong evidence of such fact."[7]

We have reviewed the records and find agreement with the above observations. Accordingly, the charges filed against Crispin I. Peralta by Aquilino Encarnacion for graft and corruption should be, as it is hereby, dismissed.

Castro, C.J., Fernando, Barredo, Antonio, Martin, Santos, and *Guerrero, JJ.*, concur.

Teehankee and *Muñoz Palma, JJ.*, concur in the result.

Makasiar, Aquino, and *Fernandez, JJ.*, took no part.

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[7] *Id.*, pp. 188, 190.