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SECOND DIVISION

[A.C. No. 1919 March 30, 1979]

CARMEN LAMES, *complainant, vs.* **FEDERICO A. LASCIERAS,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; DUTIES; CONDUCT HIMSELF TO THE BEST OF HIS KNOWLEDGE AND DISCRETION.** — A lawyer under his oath pledges that he would conduct himself as a lawyer according to the best of his knowledge and discretion, "with all good, fidelity as well to the courts" as to his clients. And in defense to the accused, he is required to employ "all fair and honorable measures" and "to present every defense that the law permits" so that the accused would not be deprived of his life or liberty without due process of law.

2. **ID.; ID.; *DE OFICIO* COUNSEL MUST EXERT HIS BEST EFFORT IN BEHALF OF HIS INDIGENT CLIENT.** — A counsel *de oficio* must exert his best efforts and professional ability in behalf of an indigent accused. Said counsel should not discharge his duties in a perfunctory manner.

3. **ID.; ID.; COUNSEL CANNOT GUARANTEE EXONERATION OF ACCUSED.** — The possibility that a more experienced and competent lawyer could have defended the client with more skill and ability is not a ground for holding that respondent is not fit to be a member of the bar, especially where his conduct was not characterized by deceit, malpractice or gross negligence and there is no showing that he was remiss in the performance of his duties, or that he suppressed facts or secreted witnesses capable of establishing the innocence of the accused. No dishonorable or corrupt motive can be ascribed to him just because he failed to obtain a verdict of acquittal. A lawyer cannot guarantee the exoneration of the accused.

4. **ID.; ID.; ABSENCE AT PROMULGATION OF JUDGMENT; IF JUSTIFIED, NOT A GROUND FOR DISCIPLINARY ACTION.** — A counsel's absence at the promulgation of judgment, especially where such absence is satisfactorily explained by him, is not a sufficient ground for subjecting him to disciplinary action.

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5. ID.; ID.; ADMINISTRATIVE CHARGE; BURDEN OF PROOF RESTS ON THE COMPLAINANT. — In an administrative case against a member of the bar, a complainant has the onus of showing that the respondent was guilty of culpable negligence or grave omissions.

RESOLUTION

AQUINO, *J.*:

Federico A. Lascieras, 45, a resident of Sariaya, Quezon, who was admitted to the bar in 1972, was charged by Carmen Lames with negligence in handling the defense of her son in Criminal Case No. 6969 of the municipal court of Sariaya, *People vs. Fructuoso Lames, Jr.*

In that case, the accused was convicted of qualified theft of coconuts. The judgment of conviction was affirmed by the Court of Appeals. Mrs. Lames also faulted the respondent for not appearing at the promulgation of the judgment although she gave him ten pesos for transportation expenses.

Respondent lawyer in his answer to the charges alleged that as counsel *de oficio* he secured a bail bond for the accused and he acted as one of the sureties; that during the trial a prosecution witness testified that she saw the accused descending from a coconut tree owned by Escolastico Alivio, and that the witness recognized Lames because of the moonlight.

The respondent disclosed in his answer that he presented three witnesses for the defense of Lames. One witness, Cecilia Hermoso, testified that Lames slept in her house at the time the alleged theft was committed. Another witness, Pedro Delfino, admitted that he was the one who climbed Alivio's coconut tree. In view of that confession, the respondent moved that the charge against Lames be dismissed and that Delfino be indicted for qualified theft but the court denied his motion.

The respondent alleged that he submitted a memorandum in behalf of Lames after telling his mother that he needed the transcripts of the stenographic notes. As he could not attend

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the promulgation of the judgment, because he had a hearing in the Circuit Criminal Court, he filed a manifestation in the municipal court stating that he could not be present at the promulgation of the judgment and requesting that he be furnished with a copy of the decision.

After learning of the judgment of conviction, the respondent filed a notice of appeal. Mrs. Lames took the records of the case from him and then denounced him to the President of the Philippines in her letter dated May 22, 1978 which was referred to this Court and was treated as a complaint for disbarment.

We hold under the circumstances recited above that there is no basis for taking disciplinary action against the respondent. His conduct as counsel *de oficio* was not characterized by deceit, malpractice or gross misconduct and incompetence. Nor can any dishonorable or corrupt motive be ascribed to him just because he failed to obtain a verdict of acquittal. The respondent cannot be blamed for the failure of the municipal judge to grant his motion for dismissal based on Delfino's judicial confession. The complainant and her present counsel should know that the respondent could not guarantee the exoneration of the accused.

A lawyer under his oath pledges that he would conduct himself as a lawyer according to the best of his knowledge and discretion, "with all good fidelity as well to the courts" as to his clients. And in defense of the accused, he is required to employ "all fair and honorable measures" and "to present every defense that the law permits" so that the accused would not be deprived of his life or liberty without due process of law.

As Justice Sanchez said, a counsel *de oficio* must exert his best efforts and professional ability in behalf of an indigent accused. Said counsel should not discharge his duties in a perfunctory manner. (*In re* Lope Adriano, *People vs. Estebia,* L-26868, February 27, 1969, 27 SCRA 106, 109).

There is no justification for holding in this case that the respondent violated his oath as a lawyer or was remiss in the performance of his duties. There is no showing that he suppressed facts or

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secreted witnesses capable of establishing the innocence of the accused.

The possibility that a lawyer, more experienced and competent than the respondent, could have defended complainant's son with more skill and ability, is not a ground for holding that the respondent is not fit to be a member of the bar.

The complainant has the onus of showing that the respondent was guilty of culpable negligence or grave omissions in conducting the defense of her son. She failed to sustain that burden of proof. "*No es practica laudable echar la culpa a un compañero en la profesion, a menos que las pruebas la demuestren claramente. La presuncion es que todo abogado emplea todos sus esfuerzos para servir los fines de la justicia*" (*People vs. Mantawar*, 80 Phil. 817, 822-3). That presumption was not overthrown in this case.

Complainant's insinuation that the respondent wrongfully exacted from her the amount of twenty-seven pesos is unwarranted because that amount was used to pay for the transcripts of stenographic notes which respondent needed in preparing his memorandum.

With respect to the sum of ten pesos, which the complainant paid to the respondent, that amount was given for respondent's transportation expenses in going from his residence at Barrio Lutucan to the municipal court in the poblacion.

We can visualize that the complainant, who is not an affluent person, would not want that the sum of thirty-seven pesos, which she gave to the respondent, should be squandered recklessly, but it does not appear that the respondent defrauded her of that amount or that he misused and misappropriated it.

Respondent's absence at the promulgation of the judgment is not a sufficient ground for subjecting him to disciplinary action. He satisfactorily explained why he could not be present at that proceeding.

WHEREFORE, the administrative complaint against respondent is dismissed.