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SECOND DIVISION

[A.C. No. 1267. October 29, 1976]

CARMENCHU MADERAZO, *complainant, vs.* Atty. BENJAMIN DEL ROSARIO, *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; ATTORNEYS; DISBARMENT; THE SERIOUS CONSEQUENCES OF DISBARMENT OR SUSPENSION SHOULD FOLLOW ONLY WHERE THERE IS A CLEAR PREPONDERANCE OF EVIDENCE AGAINST THE RESPONDENT.— Applying the case, *In re* Tionko opinion of Justice Malcolm, a 1922 decision Thus: "The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath." Since then, such a principle has been adhered to. In the absence of any evidence demonstrating culpability, the administrative charge cannot prosper.

RESOLUTION

FERNANDO, *J.*:

The impression yielded by this administrative complaint against respondent Benjamin del Rosario, a member of the bar, is that it was not so much the lapse from the moral standard consisting of his having represented himself as separated from his wife, and thus enabling him, presumably after the proper courtship, to live maritally with petitioner Carmenchu Maderazo, but his having abandoned her after a son was born to them. She was thus constrained to file an action for recognition of the child and for his support before the Juvenile and Domestic Relation Court of Quezon City. He was required to answer the complaint. That he did, denying specifically each and every allegation. There was, in addition, the special and affirmative defense that

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such case for support constituted a prejudicial question which should first be resolved before action is taken on this administrative complaint.

The matter was referred to the Solicitor General's Office on February 21, 1974 for investigation, report and recommendation. The report and recommendation was submitted to this Court on October 1, 1976 by Acting Solicitor General Hugo Gutierrez.[1] It was therein set forth that the issue raised is whether "disciplinary action should be taken against respondent Atty. Benjamin del Rosario for having allegedly cohabited with the complainant Carmenchu V. Maderazo, as her husband, out of which cohabitation a son named Jonathan M. del Rosario was allegedly born of the couple; and for having thereafter abandoned both the complainant and the child."[2] It was then stated: "The complainant in this case adduced no evidence in support of her complaint against the respondent. There is, therefore, no iota of evidence at all to show that respondent is guilty of the charges filed against him."[3] Further: On the other hand, complainant herself had executed an affidavit marked as Exhibit '1' for the respondent, stating that she was misled by a close relative into filing this administrative complaint against respondent; that the respondent is not the father of her child Jonathan del Rosario, as she had never had any intimate relations with him; that she could not substantiate or prove the allegations in her complaint, which are not true; and that she executed said affidavit for the purpose of dismissing with prejudice the instant administrative case. Moreover, complainant's own lawyer, Atty. Pablito A. Gahol, declared in the investigation of this case that the aforementioned affidavit was voluntarily and freely executed by the complainant. Said affidavit and Atty. Gahol's testimony, coupled with the repeated failure of complainant to appear at the investigation of this case, not only shows her

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[1] He was assisted by Assistant Solicitor General Alicia V. Sempio-Diy and Solicitor Amado D. Aquino.

[2] Report and Recommendation, 6.

[3] *Ibid.*

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[lack of interest] in prosecuting this case, but strengthens the belief that her instant complaint cannot indeed be substantiated."[4] It was likewise pointed out: "For his part, the respondent affirmed the allegations in his motion to dismiss and denied all the material allegations of the complaint filed against him. Respondent also introduced in evidence the order dated April 22, 1974 of the Court of First Instance of Quezon City in Civil Case No. QE-00616 'For Support and Recognition' of child, which was filed by the complainant in behalf of her child Jonathan M. del Rosario. In said order which respondent marked as his Exhibit '2', the Court dismissed the complaint on the basis of a joint motion filed by the parties therein"[5]

Under the above circumstances, considering the facts of record, it is understandable why Acting Solicitor General Gutierrez recommended "that this case be dismissed."[6] That is to conform with the settled law on the subject. It goes back to the *In re* Tionko opinion of Justice Malcolm,[7] a 1922 decision Thus: "The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath."[8] Since then, such a principle has been adhered to.[9] In the absence of any evidence demonstrating culpability, the administrative charge cannot prosper.

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[4] *Ibid*, 6-7.

[5] *Ibid*, 7.

[6] *Ibid*, 8.

[7] 43 Phil. 191.

[8] *Ibid*, 194.

[9] Cf. *Javier v. Cornejo*, 63 Phil. 293 (1936); *De Guzman v. Tadeo*, 68 Phil. 554 (1939); *In re Attorney C. T. Oliva*, 103 Phil. 312 (1958); *Blanza v. Arcangel*, Adm. Case No. 492, Sept. 5, 1967, 21 SCRA 1; *Magno v. Gellada*, Adm. Case No. 767, Dec. 20, 1971, 42 SCRA 549; *Misamin v. San Juan*, Adm. Case No. 1418, Aug. 31, 1976.

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WHEREFORE, the administrative complaint against Benjamin del Rosario is dismissed. Let a copy of this resolution be spread on his record.

Barredo, Antonio, Aquino, and *Concepcion, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. L-25712. October 29, 1976]

MUNICIPALITY OF PAOMBONG, BULACAN, *petitioner-appellant, vs.* **LUIS SAN JUAN,** *respondent-appellee.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; WHEN MOOT AND ACADEMIC; CASE AT BAR.— On September 28, 1965, the trial court rendered the aforementioned decision. Not satisfied with this decision, the petitioner appealed to this Court raising the legal issue of whether or not the Contract of Lease of Fishpond, which was executed on March 10, 1960 in favor of respondent Luis San Juan for a five-year period, from January 1, 1961 to December 31, 1965, after a public bidding, could thereafter, before the expiration thereof, be extended for another five-year period from January 1, 1966 to December 31, 1970, by mere agreement of the petitioner and respondent, without the benefit of a similar public bidding. It is, however, unnecessary to resolve the question since the five-year period stipulated in the "Extension of Lease Agreement" expired on December 31, 1970. In other words, by its terms, the challenged contract had already ceased to be effective. WHEREFORE, the present appeal should be, as it is hereby, DISMISSED for being moot and academic.