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Fernando, Actg. C.J., Antonio and *Martin, JJ.*, concur.

Barredo, J., concurs, because the offense was committed thirty-five years ago. Otherwise, there should have been a heavier sanction.

Concepcion Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

[Adm. Case No. 1594. May 7, 1976]

SECOND DIVISION

ESTRELLA OCHIDA, complainant, *vs.* HONESTO CABARROGUIS, respondent.

ADMINISTRATIVE CASE against a member of the bar.

SYNOPSIS

While arguing a motion in a civil case, respondent counsel characterized complainant as a "fugitive from justice." The latter regarded the characterization as a vilification or calumny and filed in the lower court a verified complaint for disbarment which was forwarded to the Supreme Court.

The Supreme Court held that respondent's infelicitous utterance does not constitute gross misconduct. Counsel was, however, warned that the use of offensive language should be avoided and that a repetition of that impropriety would be dealt with more severely.

SYLLABUS

Of the Ruling of the Court

1. JUDICIAL ETHICS; LAWYER SHOULD AVOID USE OF INTEMPERATE LANGUAGE, AND TREAT OPPOSITE PARTY

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WITH FAIRNESS.– A lawyer should treat the opposite party or suitor "with fairness and due consideration" and should avoid offensive personalities and improper speech against an opposing litigant.

2. ID.; ID.; INFELICITOUS UTTERANCE DOES NOT CONSTITUTE GROSS MISCONDUCT.– The respondent lawyer used abrasive language in branding the opposite party as a "fugitive from justice", an expression which refers to "one who having committed or being accused of a crime in one jurisdiction is absent for any reason from that jurisdiction; specifically: one who flees to avoid punishment." A lawyer with a keen sense of decorum and propriety would have avoided such intemperate language. Respondent's infelicitous utterance, however, does not constitute gross misconduct. Hence, no disciplinary action is called for. He is warned that the use of offensive language should be avoided and that a repetition of that impropriety would be dealt with more severely.

3. ID.; ID.; LAWYERS MAY BE PARDONED SOME INFELICITIES OF PHRASE.– Lawyers should be allowed some lattitude of remark or comment in the furtherance of the causes they uphold. For the felicity of their clients, they may be pardoned some infelicities of phrase.

APPEARANCES OF COUNSEL

Jose P. Arro for complainant.

H. & A. Cabarroguis, Agravante & Sandiego for respondent.

RESOLUTION

AQUINO, *J.*:

Estrella Ochida is the defendant in Civil Case No. 529 of the Court of First Instance of Davao, Tagum, Branch IX. That case was filed against her by the heirs of Felipe Cordova.

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On September 24, 1975 Atty. Honesto Cabarroguis, the counsel for the heirs, while arguing a motion in the said case characterized Mrs. Ochida as a "fugitive from justice". He said:

> "Atty. Cabarroguis: That is not the point. There are matters here which have become moot and academic because the Director of Forestry has already ordered it. So what is left in fact before the Honorable Court is our claim for Estrella Ochida to render an accounting and for us to get the court's approval of the revocation so that she can not continue representing the heirs of Felipe Cordova in public.
>
> "As Atty. Arro stated, Estrella Ochida is in Manila. As a matter of fact, we can safely say she is a fugitive from justice because there are five (5) warrants of arrest pending against her.
>
> "Atty. Arro: We object to that manifestation, Your Honor. It is off-tangent. We move that the same, Your Honor, be stricken off from the records.
>
> "Court: I hope the counsels will stick to the matters * * * Strike it off from the records."

Mrs. Ochida resented the characterization that she was a "fugitive from justice". She regarded it as a vilification or calumny. On October 8, 1975 she filed in the lower court a verified complaint for disbarment against Atty. Cabarroguis. It was forwarded to this Court.

The respondent in his comment invoked the rule that the relevant utterances of judges, lawyers and witnesses in judicial proceedings are absolutely privileged. He alleged that the statement complained of was pertinent to the case because he wanted to underscore Mrs. Ochida's dilatory tactics; that the truth was that she was charged with estafa in five cases, and that the special counsel of the Provincial

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Fiscal's Office of Davao del Norte in his resolution dated November 26, 1975 dismissed her complaint against Atty. Cabarroguis for grave oral defamation in connection with the same statement.

The respondent further pointed out that Mrs. Ochida's complaint against him for damages in the sum of ₱132,000, also in connection with the same utterance, was dismissed by the Court of First Instance of Davao in its order dated December 3, 1975 in Civil Case No. 710.

He claimed that the criminal and civil complaints as well as the instant disbarment charge were filed in bad faith and were intended to harass him.

Mrs. Ochida in her reply contended that respondent's imputation against her was not relevant; that it was inaccurate because she had posted the corresponding bail bonds, and that she appealed from the order dismissing her complaint for damages.

The issue is whether the respondent committed a gross misconduct which justifies disciplinary action against him.

A lawyer should treat the opposite party or suitor "with fairness and due consideration" and should avoid offensive personalities and improper speech against an opposing litigant (Par. 18, Canons of Professional Ethics).

The respondent lawyer used abrasive language in branding Mrs. Ochida as a "fugitive from justice", an expression which, according to Merriam-Webster's dictionary, refers to "one who having committed or being accused of a crime in one jurisdiction is absent for any reason from that jurisdiction; specifically: one who flees to avoid punishment". A lawyer with a keen sense of decorum and propriety would have avoided such intemperate language.

On the other hand, it is believable that the respondent, irked by the alibis interposed by opposing

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counsel that Mrs. Ochida was "out of town" or was in Manila, lost his cool and was provoked to resort to strong language against her.

"Undoubtedly, lawyers should be allowed some latitude of remark or comment in the furtherance of the causes they uphold." As felicitously observed in a case, "for the felicity of their clients, they may be pardoned some infelicities of phrase" (Dorado *vs.* Pilar, 104 Phil. 743, 748).

Respondent's infelicitous utterance does not constitute gross misconduct. Hence, no disciplinary action is called for. He is warned that the use of offensive language should be avoided and that a repetition of that impropriety would be dealt with more severely (Dorado *vs.* Pilar, *supra;* Deles *vs.* Aragona, Jr., Administrative Case No. 598, March 28, 1969, 27 SCRA 633).

The complaint in this case is dismissed. So ordered.

Fernando, Actg. C.J., Barredo, Antonio and *Martin, JJ.*, concur.

Concepcion Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

[No. L-39174. May 7, 1976]

FIRST DIVISION

JACKBILT CONCRETE BLOCK CO., INC. and ALBERT GOLDEN, petitioners, *vs.* NORTON & HARRISON