Supreme Court E-Library

Hence, considering that treachery is not attendant in the case at bar, the crime committed is homicide which is punishable by *reclusion temporal* under Article 249 of the Revised Penal Code. Applying the Indeterminate Sentence Law, the imposable penalty goes down by one degree.

WHEREFORE, the judgment appealed from is hereby *AFFIRMED,* with the modification that accused-appellant is found guilty beyond reasonable doubt only of the crime of homicide, and, for purposes of the Indeterminate Sentence Law, considering that no aggravating or mitigating circumstance attended the commission of the crime, accused-appellant is hereby sentenced to an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. The awards of indemnity are likewise affirmed, with the modification above-stated.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, Pardo, and *Ynares-Santiago, JJ.,* concur.

FIRST DIVISION

[A.C. No. 4411. June 10, 1999]

JAIME CURIMATMAT, ET AL., *complainants, vs.* **ATTY. FELIPE GOJAR,** *respondent.*

SYNOPSIS

Respondent was administratively charged by his clients, former employees of the Uniwide Sales, Inc., with lack of fidelity to his clients' cause. Complainants alleged that respondent has been remiss in his duty to appeal on time the adverse Resolution of the

Supreme Court E-Library

DOLE Secretary in Case No. OS-MA-A-6-84-93 affirming the dismissal of the union's Petition for Certification Election and for having moved for the dismissal of complainants' petition for review with the Supreme Court against the decision of the DOLE without complainants' consent. Respondent denied all the allegations in the complaint and explained his side of the controversy. In a Resolution dated November 22, 1995, the Court referred the letter-complaint to the Board of Governors of the Commission on Bar Discipline of the Integrated Bar of the Philippines. Hearings were set but respondent opted no to appear in any of the scheduled hearings. On November 5, 1998, the Board of Governors of the IBP passed a resolution recommending that respondent be suspended from the practice of law for six months for failure to demonstrate the required fidelity to his client's cause.

A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed on him. Failure to do so violates Canon 18 of the Code of Professional Responsibility. Respondent did not substantiate his self-serving claim that he was not remiss in his duties towards his clients and that he consulted complainants and sought their conformity to the withdrawal of the case before the Court. The Supreme Court, however, does not believe that respondent's shortcomings warrant his suspension from the practice of law. Considering that this is his first offense, respondent was reprimanded by the Court with a warning that any repetition of the same shall be dealt with more severely.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEY; RESPONDENT REPRIMANDED FOR FAILURE TO DEMONSTRATE THE REQUIRED FIDELITY TO HIS CLIENT'S CAUSE.—** In *Gamalinda vs. Alcantara* (206 SCRA 468 [1992]), we ruled that a lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed on him. Failure to do so violates Canon 18 of the Code of Professional Responsibility (*Legarda vs. Court of Appeals*, 209 SCRA 722 [1992]). In the case at bar, respondent is alleged to have been remiss in his duty to appeal on time the adverse Resolution of the DOLE Secretary in Case No. OS-MA-A-6-84-93 affirming the dismissal of the union's Petition for Certification Election at the Uniwide Sales Branches; and for having moved for the dismissal of complainants' petition

Supreme Court E-Library

for review with the Court against the decision of DOLE Undersecretary Bienvenido Laguesma, et al. (G.R. No. 113201) without their consent. In his Comment (*supra*), respondent attempted to refute the allegations against him and explained his side of the controversy. He did not, however, substantiate his self-serving claim that he was not remiss in his duties towards his clients and that he consulted complainants and sought their conformity to the withdrawal of their case before the Court, which case was thereafter rendered moot and academic due to the expiration of the CBA that was sought to be "discertified". Worse, respondent chose to ignore the hearings before the IBP where he could have shed more light on the controversy. We do not, however, believe that respondent's shortcomings warrant his suspension from the practice of law. Considering that this is his first offense, a reprimand would be in order.

2. **ID.; ID.; NOT ALWAYS EXPECTED TO BE VICTORIOUS.—** We would like to remind litigants that lawyers are not demi-gods or "magicians" who can always win their cases for their clients no matter the utter lack of merit of the same or how passionate the litigants may feel about their cause. While lawyers are expected to serve their clients with competence and diligence, they are not always expected to be victorious. In every litigation, there will always be a "winner" and a "loser," unless the parties agree to settle the controversy between themselves and to work at a "win-win" solution to their problems.

APPEARANCES OF COUNSEL

Raneses, Taquio, Domingo and Associates for complainants.
Felipe G. Gojar in his own behalf.

RESOLUTION

MELO, *J.*:

On April 25, 1995, respondent Atty. Felipe G. Gojar was administratively charged by his clients, former employees of the Uniwide Sales, Inc., with lack of fidelity to his clients' cause. The alleged prejudicial acts of repondent, as alleged in the letter-complaint, are herein enumerated as follows:

Supreme Court E-Library

1. We file a petition for review with the Supreme Court under G.R. No. 113201 entitled "*Associated Trade Unions, et al. vs. Honorable Bienvenido E. Laguesma, et al.* Our lawyer was Atty. Felipe G. Gojar. We had been following it up with our said lawyer since then and up to the start of this year, 1995. But, we were advised by our lawyer Atty. Gojar that the petition was still pending with the Honorable Supreme Court. Lately, we discovered that our Lawyer, Atty. Gojar moved for the dismissal of the petition without our consent and authority. Attached is a copy of the Manifestation and Motion" as Annex "A".

2. In the meantime, an "Unfair Labor Practice" case was also filed with the NLRC, Manila entitled "*Rex Alfonte, et al. vs. Uniwide Sales Warehouse Club, et al.* under NLRC Case No. NCR-00-12-07755-93. This case was dismissed. The decision was received by Atty. Gojar on July 14, 1994. He filed an appeal on August 8, 1994 which was beyond the ten (10) day period. However, he stated in his appeal that he received the decision on July 29, 1994, which is not true. Attached is a copy of his receipt of the decision on July 14, 1994.

3. Also, another case was filed with the NLRC involving money claims. The case was dismissed. Atty. Gojar filed an appeal. The appeal was also dismissed. He told us that he will prepare a petition for review with the Supreme Court. We have been going to his office for several times so that the petition for review will be filed. On one occasion, he told us that he cannot yet prepare the petition for varied reasons like: he has volume of professional work; failing health and others but, up to the present, the petition is not filed.

4. Another case is likewise filed with the National Labor Relation Commission, Manila NLRC-NCR Case No. 00-07-04380-93 entitled "*Aniceta Salgado et al. vs. Uniwide Sales Warehouse Club Edsa et. al.* We have been following it up with Atty. Gojar but, his response was "The case is still pending." On February 21, 1995, I, Ines Salgado went to the office of the Labor Arbiter. In the said office, it was found out that a decision was already rendered on September 30, 1994 and Atty. Gojar had already received said decision but, he failed to file the necessary appeal. What had been told to us that there was not yet decision. In short, Atty. Gojar deliberately hide to us that a decision was already rendered on September 30, 1994.

(*Rollo*, pp. 1-4.)

On August 31, 1995, respondent filed his Comment vehemently denying all the allegations in the complaint, thusly:

Supreme Court E-Library

1. Contrary to the false and malicious allegations of complainants in paragraph 1of the letter-complaint, the Manifestation and Motion dated July 21, 1994 (Annex "A" of Complaint) in G.R. No. 113201 was filed by respondent after due consultation and with the conformity of the petitioners therein. x x x.

Respondent never misrepresented to the ATU members anything regarding the proceedings in G.R. No. 113201. As the counsel for the said union and its members, respondent was never remiss in his duties to his clients and promptly informed them of all proceedings not only in G.R. No. 113201 but also in all other cases filed in behalf of ATU members.

x x x x x x x x x

Respondent therefore is at a loss as to why the complainants brought an administrative complaint against him for alleged violation of his oath as a lawyer. Likewise, it is inconceivable how the withdrawal of the petition "prejudiced" the complainants when the CBA sought to be "discertified" had already expired in April of 1995.

2. It is not true as falsely claimed by the complainants in paragraph 2 of the letter-complaint, that respondent filed an appeal in behalf of complainants beyond the ten-day reglementary period.

The truth of the matter is that, in the case being referred to, NLRC Case No. NCR-00-12-07755-93 (*Alfante, et al. vs. Uniwide Sales Warehouse Club, et al.*), the appeal being referred to was not filed by the respondent. The said appeal was filed in behalf of complainants by Francisco Listana, a National Officer of ATU (a copy of the Appeal is attached hereto as Annex "2").

x x x x x x x x x

Complainants are making it appear that respondent was remiss in his duties in not appealing on time the decision. Nothing can be farther from the truth. The complainants deliberately did not disclose to this Honorable Court that the respondent, immediately upon receipt of the decision of the Labor Arbiter on July 14, 1994, called the complainants to a meeting to inform them of the decision which was unfavorable to them. Upon being informed of such decision, the complainants discussed among themselves and after some time, they told the respondent of their disappointment of the outcome of the case and that they have decided to get another lawyer to handle their case. Respondent had no choice but to follow the wishes of his clients and so he informed them to come

Supreme Court E-Library

back the next day to get the records from the National Officer of ATU. Respondent gave instructions to the National Officer to arrange the records and give them to the complainants.

But the complainants did not come back and respondent was not informed of such fact until sometime in the first week of August 1994, when the National Officer told him. By that time, the reglementary period to appeal had expired. At any rate, the National Officer took it upon himself to file an appeal in behalf of the complainants. Unfortunately, the complainants, instead of being grateful, denied having authorized the National Officer to file the appeal in their behalf.

x x x x x x x x x

In the case adverted to by the complaints (NLRC-NCR Case No. 00-07-04380-93), it is not true that respondent "deliberately hide" to the complainants the fact that a decision had been rendered in that case on September 30, 1994. How can respondent hide the decision from complainants when they are very diligent in following up the case with the respondent and even with the labor arbiter?

Contrary to the utterly perjurious and malicious allegations of complainants in paragraph 4 of their letter, it is not the fault of respondent that no appeal was filed in that case. The complainants have no one to blame but themselves. Even before respondent informed the complainants that he received a decision adverse to them, the latter had already known from their source at the labor arbiter that such a decision had been issued.

The complainants in that case, like those in the first case mentioned in paragraph 2 hereof, felt disappointed at the outcome of the decision and told the respondent that they secured the services of another lawyer to represent them in their appeal. They never contacted the respondent after their last meeting sometime in the first week of October 1994. Respondent cannot therefore be faulted for it was the complainants themselves who led him into believing that their rights were amply protected as their remedy of appeal would be carried on by the new counsel of their choice.

(*Rollo*, pp. 38-43.)

In a Resolution dated November 22, 1995, the Court referred the letter-complaint to the Board of Governors of the Commission on Bar Discipline of the Integrated Bar of the Philippines. Hearings were set on October 1, 1996, November 19, 1996, July

Supreme Court E-Library

14, 1997, March 14, 1997, May 9, 1997, and June 20, 1997. Respondent was duly notified of all the scheduled hearings but he opted not to appear in any of them. Complainants, therefore, presented their evidence *ex parte.*

On November 5, 1998, the Board of Governors of the Integrated Bar of the Philippines passed a resolution recommending that respondent be suspended from the practice of law for six (6) months for failure to demonstrate the required fidelity to his client's cause.

In *Gamalinda vs. Alcantara* (206 SCRA 468 [1992]), we ruled that a lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed on him. Failure to do so violates Canon 18 of the Code of Professional Responsibility (*Legarda vs. Court of Appeals*, 209 SCRA 722 [1992]). In the case at bar, respondent is alleged to have been remiss in his duty to appeal on time the adverse Resolution of the DOLE Secretary in Case No. OS-MA-A-6-84-93 affirming the dismissal of the union's Petition for Certification Election at the Uniwide Sales Branches; and for having moved for the dismissal of complainants' petition for review with the Court against the decision of DOLE Undersecretary Bienvenido Laguesma, et al. (G.R. No. 113201) without their consent. In his Comment (*supra*), respondent attempted to refute the allegations against him and explained his side of the controversy. He did not, however, substantiate his self-serving claim that he was not remiss in his duties towards his clients and that he consulted complainants and sought their conformity to the withdrawal of their case before the Court, which case was thereafter rendered moot and academic due to the expiration of the CBA that was sought to be "discertified". Worse, respondent chose to ignore the hearings before the IBP where he could have shed more light on the controversy.

We do not, however, believe that respondent's shortcomings warrant his suspension from the practice of law. Considering that this is his first offense, a reprimand would be in order.

At this juncture, we would like to remind litigants that lawyers are not demi-gods or "magicians" who can always win their cases for their clients no matter the utter lack of merit of the same or

Supreme Court E-Library

how passionate the litigants may feel about their cause. While lawyers are expected to serve their clients with competence and diligence, they are not always expected to be victorious. In every litigation, there will always be a "winner" and a "loser," unless the parties agree to settle the controversy between themselves and to work at a "win-win" solution to their problems.

WHEREFORE, foregoing premises considered, respondent Atty. FELIPE GOJAR is hereby *REPRIMANDED* with a warning that any repetition of the same shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, Pardo, and *Ynares-Santiago, JJ.,* concur.

EN BANC

[A.C. - CBD No. 471. June 10, 1999]

LT. LAMBERTO P. VILLAFLOR, *complainant, vs.* **ALVIN T. SARITA,** *respondent.*

SYNOPSIS

The case under consideration is an administrative case originated from a sworn affidavit complaint filed before the Integrated Bar of the Philippines by Lt. Lamberto P. Villaflor seeking the disbarment of Atty. Alvin Sarita for disregarding the temporary restraining Order issued by the Court of Appeals in relation to the case entitled "*Lamberto Villaflor vs. Biyaya Corporation.*" Records show that despite the issuance of the TRO by the Court of Appeals, respondent still filed before the Municipal Trial Court an Urgent *Ex-parte* Motion for the implementation and/or Enforcement of the Writ of Demolition, which was granted by MTC Judge Amatong.

The Court ruled that the facts and evidence obtaining in the instant case clearly reveal respondent's failure to live up to his duties