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SECOND DIVISION

[A.M. No. P-1313. August 6, 1980]

JOSEFINA ALMALEL *VDA.* DE HERBER, *complainant, vs.* **LEODY MANUEL, Deputy Sheriff of Manila,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; DISMISSAL THEREOF FOR FAILURE TO PROSECUTE.— Mrs. Herber was unable to attend the hearing scheduled by the Executive Judge. Due to her absence, he recommended that this case be dismissed for failure to prosecute the same.

D E C I S I O N

AQUINO, *J.:*

The complainant, now an sexagenarian widow, in her verified complaint dated June 7, 1976, denounced Leody Manuel, a deputy sheriff of Manila, for having committed misconduct in office.

She alleged that at about six o'clock in the morning of April 23, 1976, Manuel entered her residence and forced his way into her room by pushing the door panel which hit her breast and caused her physical injuries. The details of the incident, as recited in her affidavit, are as follows:

"2. That sometime on April 23, 1976 at about 6:00 in the early morning, the doorbell/buzzer of the house was rung, and after a while my mother Maximina Yatco Almalel spoke aloud telling me that someone wants to speak with me, and I answered aloud asking 'who is he, do I know him? What does he want? It is very early.' Thereafter I just immediately saw one man coming up the stairs, hence I asked this man why he was there already as I was still not dressed, hence because of my words, this man backed up passed the panel door, and thereupon I was attempting to close the door panel, when he started to tell me that he did not come up the stairs, and because I

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was pretty much upset having seen him come up and still deny the same, I wanted to avoid discussion to allay my feelings and to do that I closed the door panel to hook up the latch, but suddenly he pushed the door panel thus causing the door panel to hit me on the breast right side, and hurting me in the process;

"3. That inasmuch as I was already startled and was weakened, he was able to come in and was explaining that he was Mr. Ogie Manuel supposedly from the sheriff's office of Manila, and was attempting to get the Television set of my son Frederick Herber, but inasmuch as I do not know him, I would not permit him, hence he left but leaving someone behind. In the meantime I was attempting to call for a police at the police station but after a while a police man came, and explaining to me that apparently the papers were in order, I did not hesitate in allowing them to take what they were taking;

"4. That after this Mr. Ogie Manuel left, inasmuch as I was very much weakened I had to stay in bed the whole day and, the days that followed until April 26, 1976 I tried to get in touch with my doctor but was unsuccessful, until April 26, 1976 when I was advised by my doctor to see him hence I had to proceed and have myself examined for the effects of the maltreatment done on me by said Ogie Manuel, and in that connection I was given the physical examination and thereafter I was issued the corresponding certification by said Dr. R. Araniego of the Philippine General Hospital which I hereto attached and make integral part of this affidavit as Annex A after prescribing the corresponding medicine which I have to medicate myself for the injuries I have suffered."

The medical certificate referred to above reads as follows:

"Mrs. J. Herber consulted the undersigned on pain of the right breast and irregularity of her heart beat apparently she was bumped on the breast last April 23/76.

"On P.E. (physical examination), she felt tenderness on the right breast on palpation but no visible evidence of injury and 3-4 extra heart beats.

"Presently, she is on analgesic and antiarrythmic drugs."

Respondent Manuel in his comment on the complaint alleged that on April 22, 1976 he and a representative of the firm,

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Emilio S. Lim Appliances, Inc., went to the house of Mrs. Herber located at 2335 Onyx Street, Sta. Ana, Manila in order to execute a warrant for the seizure of a television set purchased on the installment plan by Frederick Herber, the son of the herein complainant.

The warrant of seizure was issued by the municipal court of Makati, Rizal in the case filed by the said firm against Frederick Herber. Maximina Yatco Almalel, the mother of the herein complainant, allegedly told respondent sheriff that the television was in the locked room of the complainant who was always out during the daytime. She supposedly advised the respondent to see the complainant as early as six-thirty in the morning.

Respondent Manuel's version of what happened on the following day, which contradicts Mrs. Herber's account, is set forth in his comment as follows:

"So that the following day, April 23, 1976, as early as 6:30 in the morning, the undersigned, in the company of Messrs. Rennie Soterio, Rey Ortaliz and Freddie Dayao, and whose signatures and respective addresses appear at the back of the Warrant of Seizure (Annex A), copy of which is hereto attached and marked Annex C, went to the aforementioned address of the defendants.

"The undersigned, in the uniform prescribed for city deputy sheriffs, knocked at the door and greeted Mrs. Maximina Yatco Almalel who readily let us in. I asked if Mrs. Herber was still in. She answered in the affirmative and later on called on the complainant. The main door leads to the sala, a secondary door leads to the dining room, then a stair leading to the room of the complainant upstairs.

"We were seated at the sala when we heard the complainant asking her mother who we were and what we wanted. But despite the loud voice of her mother, Mrs. Almalel, still the complainant could not understand and refused to come down and closer.

"So that Mrs. Almalel asked me to go closer and accompanied by her, passed through the secondary door and I reached up to the foot of the stairs only and identified myself as a deputy sheriff of Manila aside from the fact that I was wearing my uniform.

"I requested her to come down, as she remained standing at the rear end up of the stairs, so I could explain my being there clearer

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to her, but she refused. So that in a clear and loud voice for her to hear, I told her that I had a warrant of seizure from the Court for the Motorola Television which her son Frederick Herber purchased by installment from the Emilio S. Lim Appliances, Inc., and which item is being kept in her room.

"Mrs. Herber, who noticeably became angry and antipathetic, rushingly came down the stairs after locking the door of her room upstairs, and when she came to where I was standing, without warning, started pushing me back until we reached the secondary door leading to the sala where my three (3) companions, Messrs. Soterio, Ortaliz and Dayao, were waiting.

"Thereupon, she tried to close and lock the said secondary door but instinctively, I was able to insert my right shoed foot to prevent her from closing and locking it, and then slowly and gently pushed back said door to gain entrance therein again.

"I explained to her again about the warrant of seizure and handed her a copy thereof but she refused to abide by the Court order. So that I proceeded to the Manila Metropolitan Police Precinct No. 6 and requested for police assistance. When I returned to the place, already in the company of Patrolman J. V. Rapiz, we again tried to convince Mrs. Herber to surrender the television set object of the warrant of seizure or to unlock her room where the same was being kept, but she still refused.

"I warned her that if she did not voluntary unlock her room within five (5) minutes, I would force it open. When she still refused, the undersigned, witnessed by Patrolman J.V. Rapiz and in the presence of Messrs. Soterio, Ortaliz and Dayao, unlocked the door of Mrs. Herber's room and took physical possession over the Motorola Television object of the warrant of seizure. Thereafter, a receipt was issued by the undersigned to the complainant.

"Complainant now claims that she was allegedly hurt when I pushed the door (secondary). Undersigned respectfully denies the same. If truth were to be told, the eyewitnesses to the complained incident have executed a joint affidavit, hereto attached and marked Annex D and made an integral part hereof, declaring under oath that:

> 'x x x Mr. Manuel requested Mrs. Herber to come down so that he could explain his purpose in going there but said Mrs. Herber refused. So that Mr. Manuel in a clear and loud voice for Mrs. Herber to hear explained that he was carrying a warrant

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of seizure for the Motorola Television that her son Frederick Herber purchased in installment from the Emilio S. Lim Appliances, Inc., which television set is being kept in her room upstairs. This angered Mrs. Herber who rushed down and began pushing Mr. Manuel until they reached the sala and upon reaching the sala, Mrs. Herber tried to lock the door but Mr. Manuel was able to insert his right shoed foot and slowly and lightly pushed the door to gain entrance therein again. x x x.'"

In reply to respondent's comment, Mrs. Herber said:

"At a glance, it appears, Sheriff Manuel has not committed any shortcoming as a public officer. His explanation, ostensibly, must have been a master-piece of a legal mind that the truth was distorted to my disadvantage while the false part of the incident has been mulled and obscured as to give a color that respondent is immaculately sinless.

"A person like Sheriff Manuel has no business to remain in the service — much less in our JUDICIARY, who could give a poor image to our courts and its personnel therein.

"While I am not accusing Sheriff Manuel for immorality in attempting to gain access to my room at an unholy hour of the morning (6:00 o'clock and not 6:30 a.m.) while I was still asleep last April 23, 1976 in the disguise of serving a Warrant of Seizure issued by a competent court — certainly, such service must have been injudicious inasmuch as he should have waited for me at the sala of our house until I have already dressed up to meet visitors.

"Sheriff Manuel must have some other ulterior motive/s in serving said Warrant of Seizure at an unholy hour of the morning — otherwise, prudence and good manners warrant that he should have remained in the sala, after all that is the only exit where I could go out.

"Since respondent is a public officer, hence, the presumption of regularity is always in his favor, justice and equity, however, demand that this case be given due course where both parties could be given their respective day in court."

Mrs. Herber filed against respondent sheriff in the City Fiscal's Office of Manila a perjury charge. She averred in her supporting affidavit of September 22, 1976 that the respondent made certain false allegations in his comment on her administrative complaint.

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(I.S. No. 76-26897.) The investigating fiscal recommended the dropping of that perjury case.

It is lamentable that it was only on January 4, 1978, or about twenty months after the incident occurred, that this case was referred to the Executive Judge of the Court of First Instance of Manila for investigation, report and recommendation. By that time, Mrs. Herber (a *balikbayan*) had already returned to the United States. (She was employed in the Ateneo graduate school as secretary-registrar from 1951 to 1954 during which time she did graduate work at the Ateneo leading to the degree of Master of Arts in Economics. She taught economic subjects in the Lyceum of the Philippines from 1954-56.)

Mrs. Herber was unable to attend the hearing scheduled by the Executive Judge. Due to her absence, he recommended that this case be dismissed for failure to prosecute the same.

In the present posture of the case, there is no alternative but to dismiss it. (Another case against the same respondent, Administrative Matter No. P1231, *Zamora vs. Manuel*, was dismissed in the resolution of the First Division dated December 14, 1977 "for failure to show a *prima facie* case.")

WHEREFORE, this case is dismissed. A copy of this resolution should be attached to the personal record of the respondent.

SO ORDERED.

Barredo (Chairman), Concepcion Jr., Guerrero,[*] and *De Castro,*[*] *JJ.*, concur.

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[*] Were designated to sit in the Second Division.