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[Adm. Matter No. R-281-RTJ. August 26, 1986]

PONCIANO A. ARBAN, *complainant, vs.* **JUDGE MELECIO B. BORJA, Regional Trial Court, Branch 20, Naga City,** *respondent.*

SYLLABUS

1. **ADMINISTRATIVE SUPERVISION OVER COURTS; JUDGES; GRAVE MISCONDUCT; MOTION TO WITHDRAW COMPLAINT, NOT MATERIAL NOR CONTROLLING; PUBLIC INTEREST INVOLVED; POSITION HELD DEMANDS HIGHEST NORM OF CONDUCT.**— The fact that the complainant filed a motion to withdraw his complaint and the fact that the public apology of Judge Borja satisfied the petitioner as far as his personal interests in the case were concerned is not very material nor controlling. The truth is what is important. Did the respondent Judge commit an act of serious misconduct, one which degrades the integrity of the judicial office and serves as a demoralizing example to the public? Justice de Pano aptly stated in his Report: "The complainant's avowal that his 'personal interests' have been 'already satisfied,' is not all there is to this case. There is the matter of the public interest involved in the case. The respondent is not just an ordinary citizen, but a highly visible member of the judicial branch of the Government, particularly, an incumbent judge of the Regional Trial Court stationed in Naga City. x x x There is, thus, not only the complainant's private interests involved, but also the public interest involved in the act of an official whose position carries with it great responsibility and which position demanded the highest norm of conduct from the incumbent both in his public and private capacities, whether in court or out of it."

2. **ID.; ID.; ID.; MOTIVE IMMATERIAL.**— We resolve any doubts in favor of the Judge and give credence to his statement — "that it is not also true that the motive was jealousy over a woman as I have no love relationships with any woman other than may wife." Whatever the motive may have been, the violent action of the respondent in a public place constitutes serious

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misconduct and the resultant outrage of the community in Naga City is a blow to the image of the entire judiciary.

3. **ID.; ID.; MUST ABIDE BY THE ESTABLISHED NORM FOR JUDICIAL BEHAVIOR.**— Judge Borja violated the established norm for judicial behavior that "a judge's official conduct should be free from appearance of impropriety, and his personal behavior not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." (Sec. 3, Cannon of Judicial Ethics) This court ruled in *De la Paz v. Inutan* (64 SCRA 540), that: "The judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests, specially in the station of municipal judges, like respondent Judge, who have that close and direct contact with the people before anybody else in the judiciary. Thus, for the judge to return that regard, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid even the slightest infraction of the law."

4. **ID.; ID.; GRAVE MISCONDUCT; PENALTY OF DISMISSAL WARRANTED IN CASE AT BAR.**— While the Investigator-Justice recommended a0 penalty of suspension for two (2) years, it is the consensus of this Court that the serious nature of the offense and the best interests of the judiciary warrant the penalty of dismissal. Moreover, this Court frowns upon prolonged suspension of judges or court personnel as a penalty, even assuming that it is deserved.

APPEARANCES OF COUNSEL

Luis General, Jr. for petitioner.
Arnold B. Guerrero for respondent.

D E C I S I O N

***PER CURIAM*:**

On March 21, 1985, Ponciano A. Arban, the then District Engineer for Camarines Sur, Ministry of Public Works and Highways, filed the instant administrative case for grave

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misconduct against Judge Melecio B. Borja, Presiding Judge of Branch XX, Regional Trial Court, Fifth Judicial Region of Naga City.

The petition alleged that:

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"2. Last February 23, 1985, at about 1:10 p.m., at the Cindy's Restaurant in downtown Naga City, in the presence of people taking their lunch and others, the said respondent, without any justification whatever, hit with the pistol he was carrying the herein petitioner on the left side of his head, sending him sprawling to the floor and rendering him momentarily unconscious.

"3. Still not satisfied with his display of violence in public, the respondent also threatened with his said gun the companions of the petitioner.

"4. Minutes before his pistol-whipping of the petitioner, the respondent fired his gun in the balcony of the apartment he is lodging in, from where he followed the petitioner to the said restaurant.

"5. As soon as it was possible, the petitioner reported the said incidents to RTC Executive Judge Juan B. Llaguno, who advised the petitioner to seek the assistance of the National Bureau of Investigation (NBI) and avoid the worse scandal of reporting to the police station, which advice was followed.

"6. The NBI investigated the petitioner and his witnesses, copies of whose statements, duly sworn to, on said acts of respondent are hereto attached as Annexes A, B, C, D, E & F. The NBI later forwarded the case to the City Fiscal of Naga, where it is now pending preliminary inquiry, delayed now for 3 weeks due to repeated requests for postponement by the respondent.

"7. More than the physical injuries suffered by the petitioner was the black eye inflicted by the respondent on the administration of justice, the judiciary in particular, considering the affront to the public's sensibility to what the media called acts 'associated only with hoodlums and hooligans.'

"8. Precisely because no judge in Naga City or Camarines Sur has ever been known to have resorted to similar barbarous acts, the same received much coverage by the print and broadcast media, whose reactions are best exemplified by the editorial, editorial cartoon and

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news story of 'Handiong,' one of the most respected newspapers in the Bicol region, hereto attached as Annexes G, H & I hereof.' (pp. 16-17, rec.)."

We referred the case to Justice Bienvenido B. Ejercito of the Intermediate Appellate Court for investigation, report and recommendation.

In his Answer, Judge Borja denied the charge against him.

The complainant together with his witnesses and counsel appeared at the scheduled hearing on June 19, 1985. Judge Borja appeared but without counsel. Borja moved for the resetting of the case. The motion was granted.

Neither the complainant nor his counsel appeared at the subsequent scheduled hearings. Instead, the complainant filed a Motion to Withdraw the Petition, to wit:

"*MOTION TO WITHDRAW PETITION*

"COMES NOW the petitioner, assisted by counsel, and respectfully states that:

"After a more mature deliberation on the various aspects of this case, the undersigned has come to the conclusion that the filing of the petition was caused by a misunderstanding by the petitioner of the motives of the respondent.

"Further, after the public apology by the respondent, the petitioner believes that the scandal caused on the public by the act of the respondent has been duly appeased."

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Consequently, Justice Ejercito recommended the dismissal of the case.

In our Resolution dated December 17, 1985, we resolved to — (a) transfer the case to Justice Nathanael de Pano of the Intermediate Appellate Court for further investigation, report and recommendation, and (b) require counsel for petitioner to appear before said Justice-Investigator for hearing of this case. We stated that his failure to do so will subject said counsel to strict disciplinary measures.

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In accordance with our Resolution, Justice de Pano conducted further hearings of the case. In his Report and Recommendation submitted to this Court, Justice de Pano summarizes the events that transpired in the course of his investigation as follows:

"A new hearing of this case was set for July 8, 1986 at 10:00 o'clock in the morning. The complainant did not personally appear at the hearing, but his counsel, Atty. Luis General, Jr., did appear in his behalf. The respondent and his counsel were present. The respondent, through counsel, moved for dismissal of the case on the ground of lack of evidence. Upon the prodding of the undersigned, Atty. General averred that the complainant no longer resides in Naga City; apparently, he had been transferred from Naga to the Office of the Ministry of Public Works and Highways in Cavite City, in consequence of which, counsel had been unable to confer with the complainant. The hearing was transferred to August 8, 1986 to enable Atty. General to contact and confer with the complainant.

"On August 8, 1986, at 2:30 o'clock in the afternoon, again, the complainant did not personally appear although his counsel, Atty. Luis General, Jr., did appear, as well as, the respondent Judge, Melecio Borja, who appeared in his own behalf. Atty. General revealed that he had conferred with the complainant, who did not wish to proceed further in the case since his personal honor and good name had already been vindicated by the respondent's public apology. Counsel informed that he had filed a written manifestation to this effect. The complainant's verified 'Second Reiteration of Motion to Withdraw,' dated July 29, 1986, signed by both the complainant personally and his counsel, states as follows:

"1. The respondent made a public apology to the petitioner for doing the specific act upon which the petition was based, which apology, after its being given full publicity, satisfied the petitioner as far as his personal interests in this case were concerned.

"2. The respondent further assured the petitioner that he would not return to the Bicol region and his transfer to Makati was already in the works and was being impeded only by the pendency of this case, thus, such transfer would appease the scandal caused by the said act of the respondent.

"3. With his personal interests already satisfied, it would be pointless for the petitioner to pursue this case, and incur further heavy expenses on his part, considering that when this case was

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first set for investigation last June 19, 1985, the petitioner spent no less than P5,000.00 attorney's fees and travelling expenses to Manila and back to Naga City, with 3 of his witnesses and counsel.

"It is respectfully submitted that, with this reiteration of the said motion to withdraw, there is nothing more the complainant can do to complete the records upon which the honorable Supreme Court may act one way or another.

"WHEREFORE, it is respectfully prayed that the said motion be granted. (p. 325, rec.)

"The complainant's 'Second Reiteration of Motion to Withdraw,' indeed, reiterates the complainant's previous 'Explanation of Non-Appearance' dated July 31, 1985 which, incidentally, was signed also by both complainant and his counsel under oath (pp. 119-120, rec.). Annex B of this document, captioned 'Apology,' dated June 25, 1985 signed by the respondent judge, Melecio B. Borja, in the presence of two witnesses, reads as follows:

"I, MELECIO B. BORJA, hereby sincerely and whole heartedly apologize to District Engineer PONCIANO A. ARBAN for what I did to him last 23 February 1985 at the Cindy Restaurant in Naga City, which act of mine inflicted on him physical injuries on the left side of his face.

"As proof of my sincerity, I hereby give him the permission to cause the publication of this apology in all media outlets. (p. 122, rec.)."

The February 23, 1985 incident involving Judge Borja and the complainant generated nationwide publicity. The February 25 — March 1, 1985 issue of VOX BICOL, a local newspaper and the March 2, 1985 issue of TEMPO in the column "BULLSEYE" of Mr. Ruther Batuigas, a Manila-based newspaper, reported that Judge Melecio Borja of the RTC Branch XX, Naga City, allegedly pistol-whipped MPWH District Engineer Ponciano Arban inside the "Cindy's Restaurant" in Naga City, Saturday, February 23, 1985. On March 4, 1985, through Deputy Court Administrator Romeo Mendoza, we sent a telegram to Judge Borja for the latter to come immediately for a conference and explain the alleged pistol whipping of Engineer Arban as reported in the newspapers.

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We designated the then Acting Court Administrator Arturo Buena to investigate the matter.

Based on the memorandum of Acting Administrator Buena, stating that a *prima facie* case of the reported pistol whipping of Engineer Ponciano Arban by Judge Borja has been established, although lacking in details, we issued a resolution dated March 19, 1985 and resolved to refer this matter to Associate Justice Bienvenido B. Ejercito of the Intermediate Appellate Court for investigation, report, and recommendation. This Court also suspended Judge Melecio Borja effective immediately from office until further orders.

This action was taken even before Engineer Arban filed the present petition considering our responsibility to discipline erring members of the bench and bar and to preserve the integrity of the judiciary.

Hence, the fact that the complainant filed a motion to withdraw his complaint and the fact that the public apology of Judge Borja satisfied the petitioner as far as his personal interests in the case were concerned is not very material nor controlling. The truth is what is important. Did the respondent Judge commit an act of serious misconduct, one which degrades the integrity of the judicial office and serves as a demoralizing example to the public?

Justice de Pano aptly stated in his Report:

"The complainant's avowal that his 'personal interests' have been 'already satisfied,' is not all there is to this case. There is the matter of the public interest involved in the case. The respondent is not just an ordinary citizen, but a highly visible member of the judicial branch of the Government, particularly, an incumbent judge of the Regional Trial Court stationed in Naga City. The complainant is, himself, an official of the government — an engineer of the Ministry of Public Works and Highways. The fact that the incident was accorded with widest possible publicity in both regional and national newspaper attests to the very sensitive position occupied by the respondent. There is, thus, not only the complainant's private interests involved, but also the public interest involved in the act of an official whose position carries with it great responsibility and which position

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demanded the highest norm of conduct from the incumbent both in his public and private capacities, whether in court or out of it."

Even a mere cursory reading of Judge Borja's "apology" in relation to the "petition" or complaint clearly indicates that Judge Borja admits the commission of the act charged.

The respondent admits in his public apology that he inflicted physical injuries on the left side of the face of District Engineer Ponciano A. Arban while they were at Cindy's Restaurant in Naga City, a public place.

We are not persuaded by the explanation of the respondent Judge in his March 12, 1985 letter to then Chief Justice Enrique M. Fernando that Mr. Arban tried to hit the respondent with a fist blow and that while parrying that blow, Judge Borja wildly swung with his right hand and happened to hit the complainant's face.

There is no doubt in the mind of the Court from the records of this case, inspite of the cover-ups and the sudden loss of interest of the complainant to vigorously pursue his complaint, that the physical injuries inflicted on Mr. Arban were caused by a pistol-whipping.

Media reported that the incident was caused by jealousy over a woman, who, with two other women, was with Arban's group, then left Arban to join the Judge, but later decided to again join Arban's group. While the explanation of the respondent admits the presence of three ladies and three other men with Engineer Arban and the fact that one of the ladies, a certain Mrs. Evelyn Yu, asked to ride with the respondent in his car so she could be dropped off at the Overland Express office where she works, we resolve any doubts in favor of the Judge and give credence to his statement —

"that it is not also true that the motive was jealousy over a woman as I have no love relationships with any woman other than my wife."

Whatever the motive may have been, the violent action of the respondent in a public place constitutes serious misconduct and the resultant outrage of the community in Naga City is a

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blow to the image of the entire judiciary. Judge Borja violated the established norm for judicial behavior that "a judge's official conduct should be free from appearance of impropriety, and his personal behavior not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." (Sec. 3, Cannon of Judicial Ethics).

This Court ruled in *De la Paz v. Inutan* (64 SCRA 540), that:

"The judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests, specially in the station of municipal judges, like respondent Judge, who have that close and direct contact with the people before anybody else in the judiciary. Thus, for the judge to return that regard, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid even the slightest infraction of the law."

While the Investigator-Justice recommended a penalty of suspension for two (2) years, it is the consensus of this Court that the serious nature of the offense and the best interests of the judiciary warrant the penalty of dismissal. Moreover, this Court frowns upon prolonged suspension of judges or court personnel as a penalty, even assuming that it is deserved.

WHEREFORE, Judge Melecio B. Borja is found guilty of grave misconduct and is hereby ordered DISMISSED from the service, with forfeiture of retirement benefits and with prejudice to reinstatement in any branch of the government or any of its agencies or instrumentalities. However, he shall be paid any back salaries or accrued leaves which are due to him as of this date. This decision is immediately executory.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and *Paras, JJ.,* concur.

Feliciano, J., on leave.