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prison sentence imposable upon the appellants is only *reclusion perpetua*.

WHEREFORE, the appealed Decision is hereby *AFFIRMED* with the *MODIFICATION* that both appellants shall each serve *reclusion perpetua* and pay a fine of one million pesos (₱1,000,000).

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and *Ynares-Santiago, JJ.,* concur.

Romero, J., on official business.

SECOND DIVISION

[A.M. No. P-99-1314. June 25, 1999]

ROSANNA V. CASALME and JOSE T. CASALME, JR., *complainants, vs.* **DEPUTY SHERIFF MARVIN S. RIVERA and OIC-STENOGRAPHER III AGRIPINA N. CALUAG, of the RTC, Branch 18, Malolos, Bulacan,** *respondents.*

SYNOPSIS

This is an administrative complaint filed by Rosanna Casalme and Jose Casalme, Jr. against Marvin S. Rivera and Agripina N. Caluag, deputy sheriff and OIC-stenographer III, respectively of the Regional Trial Court (RTC), Branch 18, at Malolos, Bulacan, regarding the writ of execution in Civil Case No. 368-M-97 issued on March 4, 1998 by Agripina N. Caluag. Particularly, complainants alleged that at five o'clock in the morning of March 27, 1998 respondent Rivera, together with two companions, came to their house and showed them a writ

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of execution and demanded payment of ₱119,240.00 as full satisfaction in said civil case. When complainants asked for time so that they could show the writ to their lawyer, Rivera allegedly demanded that they give him instead their Tamaraw FX vehicle. Rivera issued a notice of levy on the Tamaraw FX indicating receipt of the same. Due to this actuation, complainant filed the instant case and in a memorandum dated April 30, 1999, the Office of the Court Administrator (OCA) recommended the dismissal of the complaint.

The Court ruled that the recommendation of the OCA for the dismissal of the case, with respect to respondent Agripina N. Caluag was well taken, but not with respect to respondent Rivera. Respondent Caluag, as Officer-in-Charge, had a ministerial duty to issue the writ of execution in view of the order of execution dated February 4, 1998 issued by the court. On the other hand, while it was respondent Rivera's duty, as deputy sheriff, to enforce the writ, he had not explained why he tried to enforce the writ so early in the morning at five o'clock when there was not even an allegation that the property he wanted to levy upon was in danger of being hidden or concealed from him. For lack of any explanation for his unseemly conduct, Rivera exposed himself and his office to the suspicion that he had ulterior motives. Accordingly the complaint against Caluag was dismissed but respondent Rivera was reprimanded.

SYLLABUS

LEGAL AND JUDICIAL ETHICS; COURT EMPLOYEES; RESPONDENT DEPUTY SHERIFF IS ADMONISHED FOR ENFORCING THE WRIT SO EARLY IN THE MORNING AT FIVE O'CLOCK; CASE AT BAR. — Anent complainants' claim that they were deprived of due process because they had not allegedly been served either summons or a copy of the decision in Civil Case No. 368-M-97, complainants' remedy is judicial rather than administrative for, if true, the proceedings against them were void. Otherwise, unless enjoined by a court of competent jurisdiction, execution of the decision should follow as a matter of course. On the other hand, while it was respondent Rivera's duty, as Deputy Sheriff, to enforce the writ, he has not explained why he tried to enforce the writ so

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early in the morning at five o'clock when there was not even an allegation that the property he wanted to levy upon was in danger of being hidden or concealed from him. For lack of any explanation for his unseemly, let alone highhanded and arbitrary conduct, Sheriff Rivera exposed himself and his office to the suspicion that he had ulterior motives.

DECISION

MENDOZA *J.*:

This is a complaint, dated April 1, 1998, of Rosanna V. Casalme and Jose T. Casalme, Jr. against Marvin S. Rivera and Agripina N. Caluag, Deputy Sheriff and OIC-Stenographer III, respectively, of the Regional Trial Court (RTC), Branch 18, at Malolos, Bulacan.

Complainants allege that at five o'clock in the morning of March 27, 1998, respondent Rivera, together with two companions, came to their house and showed them a writ of execution issued on March 4, 1998 by respondent Agripina N. Caluag. The writ was issued in connection with the decision rendered on September 2, 1997 in Civil Case No. 368-M-97 ordering complainants to pay the plaintiff therein Wilfredo Castro the amount of ₱47,000.00, plus 20% interest per annum effective February 14, 1991 until the whole obligation is extinguished, and ₱5,000.00 as attorney's fees. According to complainants, Rivera demanded payment of ₱119,240.00 per his computation. When complainants asked for time so that they could show the writ of execution to their lawyer, Rivera allegedly demanded that they give him instead their Tamaraw FX vehicle. Complainants said they told Rivera that the Tamaraw FX was still being paid for even as they offered another vehicle to the sheriff. Nonetheless, Rivera issued a Notice of Levy on the Tamaraw FX indicating therein receipt of the same. When complainants received a copy of said Notice, they were surprised to see therein a notation "[For] Sale" together with a notice for auction of the said vehicle on a specified date and place. Complainants went to the RTC, Branch 18, at Malolos, Bulacan

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and talked to respondent Caluag. They told her that they never received the summons and copy of the decision in Civil Case No. 368-M-97, but Caluag referred them to the report of the process server Gerardo L. de Claro stating that complainants had been served summons through their niece and caretaker Neneth Hervez on June 9, 1997, while a copy of the decision was allegedly served on complainant Jose T. Casalme, Jr. on December 20, 1997 although he refused to sign a receipt for it.

In their comment, respondents state that they "merely did their duties as Court personnel as the records of Civil Case No. 368-M-97 will attest" and pray for the dismissal of the complaint against them. In its memorandum, dated April 30, 1999, the Office of the Court Administrator (OCA) recommends the dismissal of the complaint.

The recommendation of the OCA with respect to respondent OIC-Stenographer III Agripina N. Caluag is well taken.

Respondent Caluag, as the Officer-in-Charge, had a ministerial duty to issue the writ of execution in view of the order of execution, dated February 4, 1998, issued by the court.

Anent complainants' claim that they were deprived of due process because they had not allegedly been served either summons or a copy of the decision in Civil Case No. 368-M-97, complainants' remedy is judicial rather than administrative for, if true, the proceedings against them were void. Otherwise, unless enjoined by a court of competent jurisdiction, execution of the decision should follow as a matter of course.

On the other hand, while it was respondent Rivera's duty, as Deputy Sheriff, to enforce the writ, he has not explained why he tried to enforce the writ so early in the morning at five o'clock when there was not even an allegation that the property he wanted to levy upon was in danger of being hidden or concealed from him. For lack of any explanation for his unseemly, let alone highhanded and arbitrary conduct, Sheriff Rivera exposed himself and his office to the suspicion that he had ulterior motives.

ACCORDINGLY, the complaint against respondent OIC-Stenographer III Agripina N. Caluag of the Regional Trial Court,

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Branch 18, of Malolos, Bulacan is DISMISSED. The Court, however, RESOLVED to REPRIMAND respondent Deputy Sheriff Marvin S. Rivera, also of the RTC, Branch 18, of Malolos, Bulacan. He is admonished to be more circumspect in his manner of enforcement of writs of execution and warned that repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and *Buena, JJ.,* concur.

SECOND DIVISION

[G.R. No. 100812. June 25, 1999]

FRANCISCO MOTORS CORPORATION, *petitioner, vs.* **COURT OF APPEALS and SPOUSES GREGORIO and LIBRADA MANUEL,** *respondents.*

SYNOPSIS

Petitioner Francisco Motors Corporation filed a complaint for Sum of Money against private respondents spouses Gregorio and Librada Manuel for the balance of the jeep body purchased by them from the petitioner, the cost of repair of the said vehicle and the costs of suit and attorney's fees. Spouses Manuel filed their answer and interposed a counterclaim for unpaid legal services by Gregorio Manuel which was not paid by the incorporators, directors and officers of the petitioner being the members of the Francisco family whom he represented in the intestate estate proceedings of the late Benita Trinidad at the time when he was still the Assistant Legal Officer of the petitioner. The trial court decided the case by granting the claims of both sides. On appeal, the Court of Appeals affirmed the trial court's decision. Hence, this petition.