

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 168

SUSPENDING MR. RICARDO P. ESCUETA FROM OFFICE AS ASSISTANT
CITY FISCAL OF QUEZON CITY.

This is an administrative proceeding instituted by Atty. Eduardo M. Albano against Assistant Fiscal Ricardo P. Escueta of Quezon City for gross incompetence and ignorance of the law. The case was formally investigated by State Prosecutor Joel P. Tiangco.

It appears that on May 27, 1967, a complaint for slander by deed was filed before the Quezon City Fiscal's Office by Araceli Pascua, a housemaid, against Patrolman Elpidio Albano (brother of complainant in this administrative proceeding) for having allegedly slapped her face several times the day previous, that is, on May 26, 1967. The case, docketed as I.S. No. 5878, was assigned to the herein respondent fiscal for preliminary investigation. On November 16, 1967, after Araceli Pascua had rested her case, counsel for Patrolman Albano moved to dismiss it on the ground that the crime of slight slander, which had been proven, had already prescribed, two months having elapsed since its commission. Respondent denied the motion. On November 20, 1967, Albano filed a motion for reconsideration, which was also denied.

In the morning of November 24, 1967, counsel for Patrolman Albano filed a motion to dismiss the case, contending that the crime of grave slander by deed had already prescribed with more than six (6) months having elapsed since its commission on May 26, 1967. Without resolving the motion, respondent filed an information with the Quezon City Court in the afternoon of November 24, 1967, charging Elpidio Albano with grave slander by deed and the same was docketed as Criminal Case No. I-132192.

The information, however, had not been approved by the City Fiscal as required by paragraph 3, Section 1 of Republic Act No. 5180 which provides that "no assistant fiscal or state attorney may file an information except with the prior authority or approval of the city or provincial fiscal or state attorney and only in a case in which he himself conducted the preliminary investigation."

It further appears that Patrolman Albano moved to quash Criminal Case No. I-132192 on the ground (1) that the crime had already prescribed and (2) that no prior approval by the City Fiscal was secured before the information was filed. The motion bore the conformity of Assistant Fiscal Primo Wisco, trial fiscal in Branch I, Quezon City Court, to whom the case had been assigned for trial. Notwithstanding that he had no official standing to intervene in the prosecution of the case, respondent filed an opposition thereto. After due hearing, the City Judge dismissed the information on January 13, 1968. Despite all the foregoing, respondent on January 24, 1968, again issued a subpoena under I.S. No. 5878 requiring Elpidio Albano to appear for investigation on February 2, 1968.

On February 9, 1968, respondent filed a notice of appeal from the order of the City Court dated January 13, 1968, and the record of Criminal Case No. I-132192 was forwarded to the Supreme Court and docketed as G.R. No. L-28699, entitled "People of the Philippines vs. Elpidio Albano." The Office of the Solicitor General, representing the appellant, filed a motion to dismiss on the ground that the crime had already prescribed, 182 days having elapsed counting from the day following the commission of the crime on May 26, 1967, to the filing of the information on November 24, 1967, when it should have been filed in six months or 180 days. In a minute resolution issued on April 24, 1968, the Supreme Court dismissed G.R. No. L-28690.

Respondent's explanation that he prepared the information in the honest belief that the prescriptive period had not then expired because six (6) months from May 26, 1967, would fall on November 26, 1967, is unsatisfactory. He should know that, in *People vs. Del Rosario* (97 Phil. 67), the Supreme Court ruled that under Article 3 of the Civil Code a month is understood as containing 30 days. Accordingly, six (6) months from May 26, 1967, would be on November 22, 1967. Hence, the filing of the information for grave slander by deed on November 24, 1967, was two days late. This was the same view of the Solicitor General, which the High Court upheld. While respondent may be correct in saying that lawyers and judges could differ in the interpretation of knotty legal questions, the same does not hold true in this case, as the Supreme Court had already spoken.

On the matter of the filing of the information without the approval of the City Fiscal, respondent contended that he entrusted the matter to his secretary-stenographer who, under the practice of the office, brings it to a clerk of the City Fiscal who takes charge of having it approved or disapproved and of filing it in court. In the investigation, it was shown that the clerk, Virgilio del Mundo, was the one who brought the case to the City Court without the required approval because, according to him, City Fiscal Justiniano Cortez and Fiscal Miguel Halili Jr., acting chief of the Fiscal's Office investigation division, were already out and he was afraid that the case might prescribe if he did not file it that same afternoon.

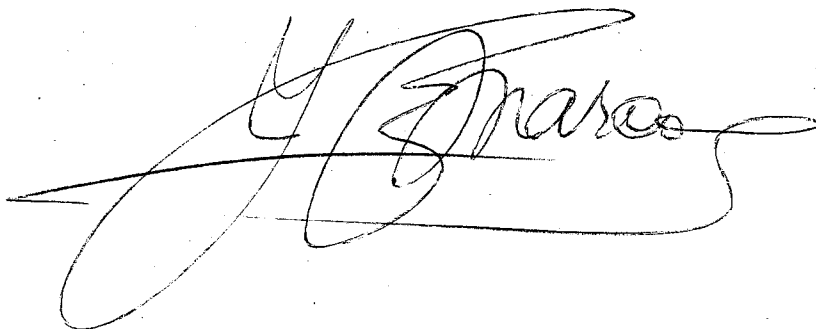
Respondent's explanation, on its face, appears to be satisfactory, except that knowing that he signed the information in the last hours of the day he thought the offense would prescribe, he should have inquired whether or not the information was approved by the City Fiscal before the same was filed as required by Republic Act No. 5130. Considering the requirements thereon of said law, the filing of an information in court, while perhaps mechanically the function of a clerk or a messenger, is the prime responsibility of the fiscal. Moreover, when in the quashal motion the fact of lack of approval of the information was raised, respondent could have corrected the error by securing the required authority but he failed to do so.

But the most serious aspect of the case is when respondent on January 24, 1968, issued another subpoena under I.S. No. 5878 requiring Elpidio Albano to appear on February 1, 1968, despite the fact that the same case he filed in court had already been dismissed. At this juncture, it may be stated that the moment an information is filed the investigating fiscal loses control of the case, unless he is also the trial fiscal. Respondent tried to justify his action by saying that he wanted to investigate Patrolman Elpidio Albano on the alleged trespass to the dwelling of Mrs. Perla Santillan, the mistress of housemaid Araceli Pascua. It appears, however, that this was a separate complaint and that the same was docketed as I.S. No. 5899, which was dismissed by Assistant City Fiscal Bonifacio D. Tanega on August 31, 1967. Respondent's action was plainly a case of harassment and grave abuse of authority.

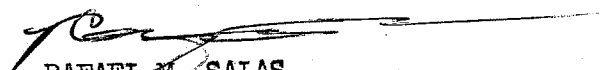
Upon the foregoing, respondent is guilty of (1) serious dereliction of duty in filing an information in violation of Republic Act No. 5180 and after the crime had already prescribed; and (2) grave abuse of authority in issuing a subpoena on a case over which he had no more control.

Wherefore, Mr. Ricardo P. Escueta is hereby suspended from office as Assistant Fiscal of Quezon City for six (6) months without pay, effective upon receipt of a copy of this order, with a warning that a repetition of similar acts will be dealt with more severely.

Done in the City of Manila, this 25th day of March ,
in the year of Our Lord, nineteen hundred and sixty-nine.



By the President:



RAFAEL M. SALAS
Executive Secretary