

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 140

SUSPENDING ASSISTANT PROVINCIAL FISCAL LEODEGARIO C. QUILATAN OF RIZAL.

This is an administrative case against Assistant Provincial Fiscal Leodegario C. Quilatan of Rizal filed by Alfredo Bautista for negligence, inefficiency and incompetence in the performance of duty.

Records show that, on June 11, 1973, a passenger jeepney driven by Enrico de Vera bumped Elviro Bautista, a 10-year old son of herein complainant Alfredo Bautista, resulting in the boy's death a few days later. On the basis of the police investigation report, the death certificate of the victim, and the written statements of witnesses Sixto de la Cruz and Meliton Constantino, an information for Reckless Imprudence Resulting in Homicide was filed against Enrico de Vera by respondent, then the 5th Assistant Provincial Fiscal of Rizal. The accused pleaded not guilty to the offense charged.

After the case was scheduled for trial fourteen (14) times in a span of almost two (2) years from April 3, 1974 up to March 18, 1976, judgment was rendered on June 26, 1976, upon a demurrer to evidence, acquitting the accused Enrico de Vera for failure of the prosecution to establish a prima facie case against him.

As a result of the acquittal of the accused, Alfredo Bautista filed a complaint with the then Ministry (now Department) of Justice sometime in July 1977, claiming that the acquittal of the accused was due to respondent's failure to present the two eyewitnesses to the accident, namely, Meliton Constantino and Sixto de la Cruz.

By way of answer to the charges, respondent, in his memorandum of May 17, 1979, thru counsel, stated:

"The essence of respondent's evidence may be summed up as follows: The alleged eyewitness, Meliton Constantino and Sixto de la Cruz, were not presented by the prosecution because they did not appear at the hearings of the case when they were supposed to testify. This act is borne by the records of Crim. Case No. 8769. It is a standard procedure in Branch XXXVI of the Court of First Instance of Rizal, Makati, Metro Manila, to which said case was assigned for trial and in which the prosecuting fiscal was the respondent, that the parties-litigants and their witnesses present at a certain hearing are required

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to sign the records that they are personally notified of the next hearing to avoid the sending of further notices or subpoena. As the records show, Meliton Constantino appeared only once and that was on June 21, 1974, when the hearing was postponed to August 26 and 27, 1974. Being present, said witness was required to sign, and in fact did sign, the back portion of the Minutes for said hearing signifying that he was duly notified of the settings on August 26 and 27, 1974. As disclosed by the records, said Meliton Constantino had not appeared at the any subsequent hearings. Insofar as witness Sixto de la Cruz is concerned, the records show that he never for once attended any hearing of the case. As a matter of fact, a return of the subpoena (page 60 of the records of Crim. Case No. 8769) dated April 5, 1974, clearly shows that witness De la Cruz 'could not be located' at the address given in the records. Subpoenas sent to both witnesses were either received and not obeyed or were returned with the information that they could not be located at the address indicated therein."

After due investigation, the Secretary of Justice found respondent guilty of the charges and recommended that he be suspended for a period of four (4) months. On respondent's failure to present the two eyewitnesses to the crime, the Justice Secretary, in his letter to the President, dated February 10, 1989, had this to say:

"In support of the administrative complaint against Fiscal Quilatan, Meliton Constantino testified that he saw the accident that resulted in the death of Elviro Bautista but he was never called up to testify in the trial of the case against the driver; that every time he went to court for the trial, complainant, his daughter-in-law and Sixto de la Cruz were his companions; that the trial of the case was repeatedly postponed for various reasons, for instance, that the judge had a conference, that the defense counsel was indisposed, and that, at one time, the mother of the judge died; that he knew the respondent as the lawyer of the complainant; that he saw complainant and a policeman testify in court; that he did not sign the record ('expediente') because, no one ever asked him to do so; and that he failed to attend the trial only once, and he attended all other trials of the case pursuant to court subpoenas.

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"Sixto de la Cruz also testified that he lived in Buli, Muntinlupa, Rizal before he transferred to San Antonio, Agos Bato, Camarines Sur, after Christmas of 1974; that he saw how the son of complainant was bumped by a jeepney; that he was not called upon to testify at the trial of the case although he attended the trial 4 or 5 times while he was still residing in Muntinlupa, Rizal, and 7 or 8 times when he was already residing in Camarines Sur; that in attending the trial, he was always with Alfredo Bautista, his wife and Meliton Constantino; that a relative of Antonio Bautista used to fetch him from Bicol for the trial; that he remembered having received subpoenas from the court but could not remember how many; that he came to know Fiscal Quilatan because of the case; that while he did see him many times in the sala of Judge Medialdea, he had no occasion to talk to Fiscal Quilatan; that he could not remember whether he signed the 'expediente'; that he was not required to sign the same after attending the trial; and that whenever the trial was postponed, he was informed by complainant of the next hearing.

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"On cross-examination, Sixto de la Cruz testified on the interior appearance of the court room and averred that the judge was usually attired in 'barong tagalog' or 'polo barong'; that the judge is an old man because he has 'white' hair; that Mr. Bautista, Pat. Manuel and Dr. Uy testified at the trial of the case; that he did not attend the trial set for February 4, 1976 since nobody fetched him from Bicol; and that the reasons for the postponements of the trial were either relayed to him by the complainant or he heard them personally in the courtroom.

"x x x

x x x

x x x

"The respondent did not give any self-serving reason or improper motive why said witnesses and complainant testified in the manner depicted in the records of the present administrative case. Complainant, a carpenter, and said eye-witnesses, mere gardeners, were simple folk, and their testimonies were simple and straightforward. They lack the sophistication to needlessly complicate matters by giving false testimonies in the present administrative case."

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Further, the Justice Secretary aptly observed:

"Even assuming, as claimed by respondent fiscal, that eye-witnesses De la Cruz and Constantino willfully refused to appear in court in open defiance of the subpoenas issued by the court, it was incumbent upon him to ask the court to use its coercive powers to secure the compulsory attendance of material witnesses in criminal cases. On cross-examination, the fiscal admitted that he did not do so. This is indicative and conclusive of negligence and inefficiency in the performance of official duty. x x x.

"Indeed, the fact that respondent fiscal never asked the court to exercise its inherent powers to compel the attendance of eye-witnesses De la Cruz and Constantino, negates the claim that they refused willfully to appear in court fourteen (14) times, and supports the testimonies of the complainant and said witnesses that the latter were present at all the hearings except that one set on February 4, 1976, when the fiscal, contrary to the role of a conscientious prosecuting officer, rested the prosecution's case without asking for a further setting to enable said vital eye-witnesses to come to court and give their testimonies."

After careful study, I concur in the findings of the Secretary of Justice. The evidence conclusively indicates that respondent failed to present the two witnesses to the crime, Meliton Constantino and Sixto de la Cruz, whose testimonies were crucial to the prosecution's cause, despite their repeated appearance during the several hearings of the case. Respondent's failure in this regard is proof of his negligence and inefficiency in the performance of official duties as a public prosecutor.

I disagree, however, with the penalty of four (4) months' suspension recommended by the Secretary of Justice. While respondent's failure to present the eyewitnesses, had it been deliberate, could have easily merited his dismissal from the service, yet it cannot be denied that his negligence resulted in the dismissal of the criminal case and the consequent denial of justice to the victim of the crime and his heirs.

WHEREFORE, Assistant Provincial Fiscal LEODEGARIO C. QUILATAN of Rizal is hereby SUSPENDED from the service for a period of ONE (1) YEAR with forfeiture of pay and allowances, effective upon receipt of a copy hereof.

Done in the City of Manila, this 20th day of September , in the year of Our Lord, nineteen hundred and eighty-nine.

Amayon b. Aquino

By the President:

Catalino Macaraig, Jr.
CATALINO MACARAIG, JR.
Executive Secretary

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