

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 407

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON
ASSISTANT CITY PROSECUTOR SALVADOR O. SOLIMA OF
THE CEBU CITY PROSECUTION OFFICE**

This refers to the administrative case against Assistant City Prosecutor Salvador O. Solima for gross misconduct/grave abuse of authority and gross ignorance of the rules on inquest.

The record shows that in the morning of August 8, 1996, Andy and Joselito Manguerra, scions of a prominent family in Cebu City, were arrested by the PNP elements in a raid conducted by virtue of a search warrant. The Manguerras were found in possession of assorted firearms and were thereafter detained.

At around 9:00 p.m. of the same day, respondent prosecutor arrived at the police station where the Manguerras were detained, and without waiting for the police to refer the case to him for inquest, he prepared and typed an inquest report recommending the dismissal of the case against the Manguerras and directing the police to release the Manguerras. Since the police refused to heed the orders of respondent prosecutor, the latter personally released the Manguerras even if his inquest report has not yet been approved by his superior, the City Prosecutor of Cebu City.

As the incident caused an uproar in Cebu City, an investigation was conducted by the Office of the Regional State Prosecutor which found that a *prima facie* case exist to hold respondent prosecutor administratively liable for gross misconduct, gross ignorance of the rules on inquest, grave abuse of authority and violation of Anti-Graft and Corrupt Practices Act. It likewise recommended that respondent prosecutor be placed under preventive suspension for six (6) months while his case is being heard.

Upon review of the records, the Secretary of Justice agreed with the findings of the Office of the Regional State Prosecutor of Region VII and hence, a formal charge was issued charging respondent prosecutor with gross misconduct/grave abuse of authority and gross ignorance of the rules on inquest. Respondent prosecutor, however, was not charged with violation of the Anti-Graft and Corrupt Practices Act for want of basis. Considering the gravity of the charge, the Secretary of Justice likewise agreed to place respondent prosecutor under preventive suspension for a period of ninety (90) days pursuant to the provisions of Book V of Executive Order No. 292 and its Omnibus Rules.

In his answer to the formal charge, respondent prosecutor claims that the charges leveled against him are without any factual basis, the truth being are those contained in his affidavit dated August 20, 1996, the affidavit dated August 23, 1996 of then City Prosecutor Jufelinito R. Pareja, the joint-affidavit dated August 16, 1996 of Attys. Delano Tecson, Jesus Osorio and Rolando Puaben and the joint-affidavit dated August 16, 1996 of Andy and Joselito Manguerra which were submitted during the investigation conducted by the Office of the Regional State Prosecutor of Region VII. He admits that he conducted an inquest on August 8, 1996 upon the instruction of then City Prosecutor Jufelinito R. Pareja, who was in turn requested by the lawyers of the two Manguerras' cousins who were then detained at the PNP Headquarters, Osmeña Boulevard, Cebu City. He also pointed out that before the lawyers of the Manguerras requested City Prosecutor Pareja for an inquest prosecutor, General Ramsey Ocampo and Atty. Narito Abrangan of the PNP had given their conformity with such request for an inquest prosecutor. He alleges that when he arrived at the PNP Headquarters at around 9:00 p.m. of the same day, the charge sheet and pertinent documents were not yet submitted and so, he waited for the arresting officers to submit the same. He waited until 2:00 o'clock dawn of August 9, 1996 but the arresting officers failed to appear and submit any evidence against the Manguerras. Since the lawyers of the Manguerras were already insisting that there was no ground for the continued detention of their clients, and in the light of the fact that the subject firearms were all covered by a license, he prepared the joint inquest report recommending the release of the Manguerras. He cited Sections 8 and 9 of the New Rules on Inquest dated September 21, 1993 as his basis for his action. His joint inquest report was approved by the City Prosecutor only in the early office hours of August 9, 1996. He belies that he ordered the police on duty to release the Manguerras prior to the approval of his report by the City

Prosecutor. He insists that he left the Manguerras together with their lawyers at the PNP Headquarters of Cebu City.

In requesting for the immediate lifting of his preventive suspension, respondent prosecutor pointed out that when this case was initially investigated by the Office of the Regional State Prosecutor, there was no complainant. He avers that General Ramsey Ocampo during the investigation made it on record that the PNP Officers were not complainants against him. He also asserts that with the approval by the City Prosecutor of his joint inquest report, it shows that the inquest proceedings he conducted was regular and in accordance with the New Rules on Inquest. He adds that being a quasi-judicial officer, his sworn duty is not only to prosecute offenders but also to see to it that the innocents are equally protected, as in the case of Manguerras. And finally, his recommendation for the release of the Manguerras having been affirmed, and the complaints against the Manguerras have been finally dismissed, this administrative case has become moot and academic.

Based on the foregoing factual backdrop, the Secretary of Justice found respondent prosecutor liable for gross and serious misconduct and gross ignorance of the basic rules on inquest and recommended that he be dismissed from the service. The explanation given by the Secretary pertinently reads:

“After a thorough study of this case, the undersigned prosecutor finds sufficient evidence to hold respondent prosecutor liable of the imputed administrative offenses.

The admission by respondent prosecutor that he conducted an inquest without the charge sheet and supporting documents formally filed against the detained person smacks of a lamentable state of real ignorance of the basic procedure embodied in the rules on inquest which has long been in effect. It is indeed difficult to comprehend why respondent prosecutor a public prosecutor for thirteen (13) years should proceed to conduct an inquest proceedings when the police officers concerned have not yet formally referred to him the complaint/referral documents against Manguerras. Irrespective of his opinion as to the regularity or irregularity of the arrest and detention of the suspects, the rules on inquest requires that the complaint/referral documents must first be submitted to the inquest officer by the law enforcement authorities before commencing the inquest proceedings. This is very clear in Section 3 of the New Rules on Inquest. (Department of Justice Circular No. 61 dated September 21, 1993) which provides, viz:

"Sec. 3 Commencement and Termination of Inquest - The inquest proceedings shall be considered commenced upon receipt by the Inquest Officer from the law enforcement authorities of the complaint/referral documents which should include:

- a) the affidavit of arrest;
- b) the investigation report;
- c) the statement of the complainant and witnesses; and
- d) other supporting evidence gathered by the police in the course of the latter's investigation of the criminal incident involving the arrested or detained person.

The inquest Officer shall, as far as practicable, cause the affidavit of arrest and statements/affidavits of the complainant and the witnesses to be subscribed and sworn to before him by the arresting officer and the affiants.

The inquest proceedings must be terminated within the period prescribed under the provisions of Article 125 of the Revised Penal Code, as amended."

Clearly, the inquest proceedings is commenced only upon receipt by the Inquest Officer from the law enforcement officers of the complaint/referral documents above-stated and upon instruction by the City or Provincial Prosecutor to render an inquest duty. Thus, the act of respondent prosecutor of disregarding the above-mentioned basic rule of procedure which resulted to the precipitate release of the Manguerras amounts to serious misconduct, grave abuse of authority and most of all gross ignorance of the well-established rule which is subject to disciplinary action. A public prosecutor, being endowed with quasi-judicial authority, owes it to the public and to the administration of justice to know the law and he is expected to exhibit more than a cursory acquaintance with the statutes and procedural rules.

The reason advanced by respondent prosecutor why he conducted an inquest in the subject case even without a formal complaint or referral documents is not sufficient justification for him to *motu proprio* take cognizance of the case as it is not allowed in the rules. When he sensed that the concerned police officers could not complete or file the necessary complaint or referral documents against the Manguerras in that night, common sense

dictates that he should have explained to the lawyers of the Manguerras that he could not act on their case without the charge sheet and supporting documents submitted to him. If the lawyers insisted for the release of their clients, he should have advised them to address their request for release to the concerned police officers who have custody over their clients. But surprisingly, respondent prosecutor apparently had shown extraordinary interest to the case. Despite the absence of a complaint or referral documents, he proceeded to conduct an inquest proceedings, required the detained persons to execute counter-affidavit and solely on the basis thereon, prepared a Joint-Inquest Report recommending the release of the detained persons. such action of respondent prosecutor is clearly highly irregular. For it is very fundamental that in inquest proceedings, what is being examined by the Inquest Officer to determine whether the arrest of the detained person was made in accordance with the provisions of paragraphs (a) and (b) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure are the complaint/referral documents submitted by the arresting officers but not the counter-affidavit or evidence submitted by the detained person. Besides, in inquest cases, the submission of counter-affidavit is not allowed, unless the detained person would demand the exercise of his right to a preliminary investigation in which case he has to execute a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, with the assistance of a lawyer and, in case of non-availability, a responsible person of his choice (Sec. 10, *supra*). With the execution of such waiver, the inquest proceedings would be converted to a regular preliminary investigation. It is only then that the Inquest Officer would require the detained person to submit his counter-affidavit or controverting evidence. Hence, it was a patent error for respondent prosecutor to take cognizance of the case and base his inquest report recommending dismissal on the latter's counter-affidavit. Such error, under the circumstances, cannot be characterized as mere deficiency in prudence, discretion and judgment, but a patent disregard of well-known rules tantamount to gross ignorance of the law.

To top it all, when the guard on duty, PO1 Dario Son Arias, refused to receive the copy of the said Joint-Inquest Report intended for the arresting officers, respondent prosecutor, flaunting his authority, said to the former that: "Mo-firma ka ug sa dili, wala ka'y mahimo niini kay ako ni silang i-release" (Whether you sign this or not, there is nothing you can do because I will release them). Aside from that, PO1 Dario Son Arias was firm and straightforward in testifying during the clarificatory hearing that respondent prosecutor together with the Manguerras left the Headquarters, and he even saw respondent prosecutor gave a ride to the Manguerras (TSN, August 26, 1996, pp. 13, 16). It may not be amiss therefore to state that the

Manguerras were released by respondent prosecutor even prior to the approval of his joint-inquest report by the City Prosecutor. Such actuations of respondent prosecutor constitute a clear case of gross and serious misconduct which cannot just simply be obliterated by the fact that the case against the Manguerras was finally dismissed. Rather, such conduct, being an example of the kind of gross and flaunting misconduct that undermines the integrity and impartiality of the prosecution service, deserves no other than the ultimate penalty of dismissal under section 22 (c), Rule IV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987).

It bears stressing that as a public prosecutor, respondent prosecutor owes it to the people to help in the preservation and maintenance of the integrity of the administration of justice. He is therefore, expected to exhibit the highest sense of honesty, integrity, efficiency and competence in the performance of his official duty. Sad to say, under the circumstances, respondent prosecutor failed to live up to these highest ethical standards. By committing the questioned acts, respondent prosecutor undermined the integrity of the service and jeopardized the public's faith in the impartiality of the prosecution office. By his conduct, he even bolstered the public perception that when it comes to the prosecution of the rich and influential persons, there is a double standard of justice, i.e. one for the rich and the other for the poor. His actuations in the premises destroy the very image of the prosecution service and henceforth, shall not be countenanced by this Department."

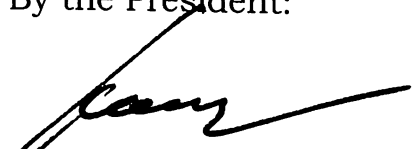
I concur with the findings of the Secretary of Justice.

The act of respondent prosecutor of disregarding the basic rules on inquest which resulted to the precipitate release of the detained persons who were charged with illegal possession of assorted firearms indeed constitutes a clear case of gross and serious mis and most of all amounts to gross ignorance of the law. The prosecution service would undoubtedly be better off minus one prosecutor who has the temerity to abuse his authority at the expense of destroying the integrity and impartiality of the public office he holds.

WHEREFORE, premises considered, respondent Assistant City Prosecutor Salvador O. Solima of the Cebu City Prosecution Office is hereby dismissed from the service.

Done in the City of Manila, this 26th of June, in the year of our Lord, Nineteen Hundred and Ninety Eight.

By the President:



RENATO C. CORONA
Chief Presidential Legal Counsel