



Republic of the Philippines  
 Supreme Court  
 Manila

CERTIFIED TRUE COPY

*Wilfredo V. Lapitan*  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division

JUL 15 2016

**THIRD DIVISION**

**MARITA CABAS,**

Petitioner,

**A.C. No. 8677**

**Present:**

- versus -

VELASCO, JR., J., *Chairperson,*  
 PERALTA,  
 PEREZ,  
 REYES, and  
 JARDELEZA,\* JJ.

**ATTY. RIA NINA L. SUSUSCO and  
 CHIEF CITY PROSECUTOR  
 EMELIE FE DELOS SANTOS,**

Respondents.

**Promulgated:**

June 15, 2016

*Wilfredo V. Lapitan*

X-----X

**RESOLUTION**

**PERALTA, J.:**

Before us is an Administrative Complaint filed by Marita Cabas (*Cabas*) against respondents Atty. Ria Nina L. Sususco (*Atty. Sususco*) and Prosecutor Emilie Fe Delos Santos (*Pros. Delos Santos*), docketed as A.C. No. 8677 for gross dereliction of duty and violation of Republic Act (R.A.) No. 6033.

In her Affidavit-Complaint<sup>1</sup> dated July 7, 2010, Cabas, an indigent, narrated that on January 11, 2010, she, together with two more complainants, filed a complaint for malicious prosecution against a certain Mauricio Valdez before the City Prosecutor's Office of Olongapo City. She alleged that they were falsely accused of Estafa by Mauricio Valdez and were in fact acquitted in an Order dated December 4, 2009.

\* On leave.  
<sup>1</sup> Rollo, pp. 2-3.

*[Handwritten mark]*

On May 21, 2010, Cabas filed an *Ex Parte* Urgent Motion to Resolve the Case before the Prosecutor's Office, which was received on the same day.

On June 3, 2010, Cabas filed anew a Second *Ex-Parte* Motion to Resolve the Case, and was received on the same day by the Prosecutor's office.

On June 23, 2010, a Third *Ex-Parte* Motion to Resolve the Case was again filed and was received on June 24, 2010.

On July 1, 2010, Cabas received a copy of the Resolution dated March 28, 2010, dismissing her complaint.

Cabas accused respondents of dereliction of duty and violation of R.A. No. 6033 for their failure to immediately and promptly decide the criminal case for malicious prosecution she filed, notwithstanding the fact that they availed of the benefits granted by law to indigents under R.A. No. 6033.

Cabas pointed out that said complaint should have been resolved in two (2) weeks after the complaint was filed with the City Prosecutor's Office pursuant to R.A. No. 6033. Thus, the instant complaint.

On August 11, 2010, the Court resolved to require respondents to file their comments relative to the complaint filed against them.<sup>2</sup>

In their Comments, both respondents denied that they are guilty of dereliction of duty and of violation of R.A. No. 6033.

Atty. Sususco averred that the complaint for malicious prosecution filed by Cabas, docketed as I.S. No. III-10-INV-10A-00049, was assigned to her on March 9, 2010 after the partial detail of Senior State Prosecutor Edwin Dayog, to whom the case was first assigned for investigation, was revoked on January 15, 2010 pursuant to DOJ Department Order No. 32. To support her claim, Atty. Sususco submitted the Affidavit<sup>3</sup> of Jaime P. Navarro, attesting to the fact that the case was assigned to the former only on March 9, 2010.

---

<sup>2</sup> *Id.* at 13.

<sup>3</sup> *Id.* at 23.

Atty. Sususco further explained that on March 28, 2010, she issued a Resolution<sup>4</sup> recommending the dismissal of the case. Later on, along with the entire records of the case, the same was forwarded by her secretary, Mrs. Marjory F. Ramos, to the Office of City Prosecutor Emilie Fe Delos Santos for review and approval. To support her claim, Atty. Sususco attached to her comment a photocopy of said Resolution and the Affidavit<sup>5</sup> of Esperanza Del Rosario, Senior Administrative Assistant I of OCP-Olongapo City and a certified copy of the pertinent page<sup>6</sup> of the logbook showing the receipt of said Resolution.

Atty. Sususco likewise alleged that her March 28, 2010 Resolution was finally approved on June 18, 2010 and released on June 24, 2010.

For her part, Pros. Delos Santos denied that she was negligent of her duties as City Prosecutor of Olongapo. In fact, she claims that she has indeed approved the Resolution dated March 28, 2010 on June 18, 2010, and that the Office of the City Prosecutor released the same on June 24, 2010.

Pros. Delos Santos further explained that she was on leave from March 15, 2010 to April 13, 2010, and that 2<sup>nd</sup> Assistant Prosecutor Evangeline Tiongson was designated as officer-in-charge. Thereafter, she was on vacation leave from April 14, 2010 to April 16, 2010 and from April 26, 2010 to April 27, 2010. Again, from April 19, 2010 to April 23, 2010, she was also on sick leave. To support her allegations, Pros. Delos Santos attached copies of her leave forms.<sup>7</sup>

Finally, with regard to the unresolved motions of Cabas, both Atty. Sususco and Pros. Delos Santos insisted that there was no longer a need to resolve them as Resolution dated March 28, 2010 rendered said motions as moot and academic.

On October 20, 2010, the Court then resolved to refer the instant case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation/decision.<sup>8</sup>

Mandatory conferences between the parties were set on March 10, 2011. Both parties were likewise directed to submit their verified position papers.

---

<sup>4</sup> *Id.* at 30-31.

<sup>5</sup> *Id.* at 32-33.

<sup>6</sup> *Id.* at 35.

<sup>7</sup> *Id.* at 55-60.

<sup>8</sup> *Id.* at 63.



In her Position Paper, Cabas maintained that respondents are guilty of dereliction of duty and deliberate violation of R.A. No. 6033 because it took almost six (6) months before respondents resolved the criminal complaint she filed.

Cabas pointed out that pursuant to R.A. No. 6033, the complaint she filed as an indigent should have been resolved in two (2) weeks after the complaint was filed with the City Prosecutor's Office of Olongapo City. Nonetheless, despite several motions to resolve said complaint, the same remained unresolved for several months.

In its Report and Recommendation dated March 8, 2013, the IBP-Commission on Bar Discipline (*IBP-CBD*) found Pros. Delos Santos guilty of dereliction of duty for failing to promptly discharge the duties of her office, and recommended that she be reprimanded. However, the IBP-CBD dismissed the charges against Atty. Sususco for lack of merit.

The IBP-CBD found Atty. Sususco to have discharged her duties with facility, promptness and without unnecessary delay considering that the case was assigned to her only on March 9, 2010. Despite the lapse of nineteen (19) days, Atty. Sususco was able to provide reasonable explanation to show that the delay in the resolution of the case was unintentional.

However, as to the charges against Pros. Delos Santos, the IBP-CBD posits that the latter failed to properly explain the delay in approving or rejecting the recommendation of Atty. Sususco. Pros. Delos Santos failed to explain why she was not able to rule on Atty. Sususco's recommendation from the time said Resolution and the records of the case were forwarded to her office on March 28, 2010.

In a Notice of Resolution No. XX-2013-469 dated April 16, 2013, the IBP-Board of Governors adopted and approved *in toto* the Report and Recommendation of the IBP-CBD.

On August 28, 2013, Pros. Delos Santos moved for reconsideration. She explained that she was not remiss in her duties as prosecutor. She claimed that while she had in fact failed to account for the 48 days of delay upon her return from leave, she assumed that the commission was aware of her heavy workload as a City Prosecutor.

Pros. Delos Santos presented a Certification from Jaime Navarro, Administrative Officer III of the Office of the City Prosecutor of Olongapo City, certifying that said office received a total of 856 cases from January to June 2010. Mr. Navarro also certified that from January 1 to March 31,



2010, a total of 444 cases were referred to Pros. Delos Santos for approval and for which 377 cases or 85% were approved, resolved and/or disposed.

Pros. Delos Santos further added that she also concurrently heads the Task Force for numerous scam and kidnapping cases. She is likewise tapped to attend to tasks assigned by the DOJ, such as preparing and implementing action plans, attending conferences, among others.

Finally, Pros. Delos Santos pointed out that in her twenty-four (24) years in government service, nineteen (19) years as prosecutor, she had maintained an untarnished record. She, thus, prayed that the complaint against her will be likewise dismissed.

In a Notice of Resolution No. XXI-2014-273 dated May 3, 2014, the IBP-Board of Governors resolved to grant respondent Delos Santos' motion for reconsideration after finding merit in the latter's explanation. Thus, as regards respondent Delos Santos, Resolution No. XX-2013-469 dated April 16, 2013 was reversed and set aside and, accordingly, the penalty imposed upon her was reduced to stern warning.

### **RULING**

We adopt the findings and recommendation of the IBP-Board of Governors.

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.<sup>9</sup>

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based

---

<sup>9</sup> *Civil Service v. Rabang*, 572 Phil. 316, 323 (2008).



on mere suspicion and speculation likewise cannot be given credence.<sup>10</sup> In the present case, there is no sufficient, clear and convincing evidence to hold both Atty. Sususco and Pros. Emilie Fe Delos Santos administratively liable for Gross Neglect of Duty.

As noted by the IBP, Atty. Sususco, although the subject case was assigned belatedly to her, was able to discharge her duties with promptness, and was in fact able to submit the Resolution on March 28, 2010.

As to the liability of Pros. Emilie Fe Delos Santos of gross neglect of duty, we likewise find no proof to support such allegation.

In order to be guilty of gross neglect of duty, it must be shown that respondent manifested flagrant and culpable refusal or unwillingness to perform a duty. However, in the instant case, Pros. Delos Santos' delay in the approval of the resolution cannot be said as flagrant and prompted by culpable refusal or unwillingness to perform her official duties. As found by the IBP, there was documentary evidence to show that Pros. Delos Santos was on approved leave during the most part of the period where the delay took place. It cannot be likewise said that she failed to perform her duties as she in fact approved the Resolution dated March 28, 2010, *albeit*, delayed by 48 days. Indeed, considering her heavy caseload, surely there will be backlog during her absence which she also has to attend to, thus, resulting in the delay of the approval of subject resolution.

Moreover, under Section 4 of R. A. No. 6033, *any willful or malicious refusal on the part of any fiscal or judge to carry out the provisions of this Act shall constitute sufficient ground for disciplinary action which may include suspension or removal*, however, in the instant case, there was no showing of malice or bad faith on the part of Pros. Delos Santos with regard to her failure to review the subject resolution.

**WHEREFORE**, we **AFFIRM** the Resolution of the Board of Governors of the Integrated Bar of the Philippines, adopting the Report and Recommendation of the Investigating Commissioner, and **DISMISS** the charges against Atty. Ria Nina L. Sususco for lack of merit. We likewise **AFFIRM** the **REVERSAL** of the Resolution of the Board of Governors of the Integrated Bar of the Philippines, and, accordingly, **DISMISS** the charges against Prosecutor Emilie Fe Delos Santos. However, Prosecutor Emilie Fe Delos Santos is hereby **STERNLY WARNED** to be circumspect in the performance of her duties, and that a repetition of the same or similar acts in the future shall be dealt with more severely.


---

<sup>10</sup>


*Dr. De Jesus v. Guerrero III, et al.*, 614 Phil. 520, 529 (2009).



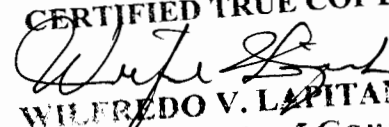
**SO ORDERED.**

  
DIOSDADO M. PERALTA  
Associate Justice

**WE CONCUR:**

  
PRESBITERO J. VELASCO, JR.  
Associate Justice  
Chairperson  
JOSE PORTUGAL PEREZ  
Associate Justice  
BIENVENIDO L. REYES  
Associate Justice

On leave  
FRANCIS H. JARDELEZA  
Associate Justice

CERTIFIED TRUE COPY  
  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division  
JUL 15 2016