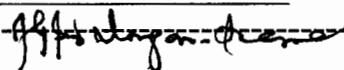


EN BANC

A.M. No. MTJ-16-1886: ANONYMOUS COMPLAINT, *Complainant v. JUDGE EXEQUIL L. DAGALA, MUNICIPAL CIRCUIT TRIAL COURT, Respondent.*

Promulgated:

July 25, 2017



CONCURRING AND DISSENTING OPINION

LEONEN, J:

I have no problems concurring in the finding that respondent committed at least two (2) counts of serious misconduct. Taken together, he should be dismissed from service with forfeiture of all benefits. He should also be perpetually disqualified for appointment or election to any public office.

The basis of this penalty is clear:

First, he could be shown to have misled the Judicial and Bar Council (JBC) through a Personal Data Sheet he submitted which did not disclose all the names of his children.¹ This is a breach of the lawyer's oath not to do falsehood in court. This breach would be sufficiently proven by the documents presented in this case.

Second, respondent brandished his M-16 armalite rifle in order to assert his position regarding a boundary dispute with a neighbor.² I agree that this act showed that he violated Republic Act No. 10591, which does not allow a judge a permit to carry this kind of high-powered weapon. Also, his act of brandishing the rifle against a neighbor, at the very least, constituted grave threats or even grave coercion, which is defined and punished under the Revised Penal Code. Likewise, the act constituted abuse of his judicial position.

His act of brandishing a rifle and his lack of registration for the firearm would be sufficiently proven with the photo and video on file.³ The Office of the Court Administrator's Report⁴ shows that neither registration

¹ *Rollo*, p. 7, Office of the Court Administrator's Report.

² *Id.* at 8.

³ *Id.* at 84, Office of the Ombudsman of Mindanao's Letter dated September 30, 2015.

⁴ *Id.* at 1-10.



papers nor a permit to carry was submitted by the respondent to justify his possession and carrying of the weapon used.

I

However, for future reference, I note some gaps in the procedure followed in this case and the tenor of the Office of the Court Administrator's Indorsement⁵ for respondent to file his Comment. The Indorsement did not require respondent judge to comment on his Personal Data Sheet or on the video, which were used as basis for his coercive acts. The Court Administrator also did not require comment on whether respondent judge had any kind of firearm or on whether this was registered.⁶

The Court Administrator's Indorsement also did not specify the provisions in the Code of Judicial Conduct which respondent judge was supposed to have violated. He was asked to comment on a number of acts that were based on rumors and testimonies of unnamed sources. Unless we would require a better specification of the charges against the judge, we would be party to a gross violation of due process.

The records of this case seem to reveal that the judge had been the subject of shifting offenses. The Anonymous Complaint⁷ focused on the coercive acts of the judge as a result of illegal cutting of trees in a specific incident. The report⁸ of the Executive Judge focused on general grounds of illegal logging and participation in illegal drugs. It also mentioned that the police investigation against the judge was still ongoing. The Memorandum⁹ of the National Bureau of Investigation seemed to have highlighted the judge as having "impregnated three (3) different women"¹⁰ and not the judge's incomplete Personal Data Sheet or his lack of registration for any firearm. It did not report on the incident mentioned in the Anonymous Complaint.

At the very least, the Office of the Court Administrator should have issued a more specific order for the respondent to comment on, to give him a chance to answer the accusations of dishonesty in his Personal Data Sheet, his use of and access to a high-powered firearm not owned by him, as well as the charges of illegal logging, intimidation, grave threats, and coercion. These were, after all, the contents of the Anonymous Complaint. Due process for our judges, even at the face of ostensible culpability, demands more specificity in the charges.

⁵ Id. at 65–66.

⁶ Id. Judge Dagala was only required to comment upon the issue of impregnating three (3) women other than his wife, alleged illegal logging, illegal drugs, and illegal gambling activities.

⁷ Id. at 84–85.

⁸ Id. at 59, Office of the Court Administrator's Memorandum.

⁹ Id. at 69–71. The Memorandum was submitted by Agent Cyril June B. Yparraguirre.

¹⁰ Id. at 70.

However, I agree with the majority that acts of grave misconduct were substantially proven.

II

In my view, the evidence to include immorality as a ground for dismissal in this case is insufficient. Immorality as a ground was not properly pleaded and proved. On this aspect, I dissent from the majority.

This case was initiated after the Office of the Court Administrator received a transmittal from the Office of the Ombudsman on October 14, 2015.¹¹ The Anonymous Complaint dated September 30, 2015 and filed with the Ombudsman of Mindanao reads in its most significant parts as follows:

I am a native of the Municipality of San Isidro, Siargao Island, Surigao del Norte. Although I am a college graduate but I opted to stay in the peaceful hometown in Siargao Island, tilling my piece of land to sustain the educational needs of my six children and for our subsistence.

It was in the afternoon of September 29, 2015 when my outlook towards a respected official of the government has changed. Around 1:30pm of the said date, I rested my in small farm hut, then I heard a loud noise of a chainsaw. Few minutes later, trees from my adjacent land smashed on the ground. Due to said disturbance, I went near to the said area to verify the activity. It was much unexpected that I was able to witness two groups of people arguing themselves on the ownership of land and the slashed trees. From the other side that I knew was the owner of my adjacent land who refused their identity to be divulged. What is very intimidating to me was the person of the other group who is very well known to me as Siargao MCTC Judge Exequil Dagala who walked back and forth, shouting and with a carried armalite firearm. I also witnessed some policemen of San Isidro doing nothing to pacify the situation but they talked in favour to Judge Dagala. No arrests of the illegal loggers to include Judge Dagala who were there supervising the illegal logging activity, no confiscation of chainsaw and the slashed trees and no verification as to the authority of Judge Dagala to bring armalite firearm were made by the police. Several times in the past I heard rumours that Judge Exequil Dagala is the mastermind of illegal logging, illegal drugs, illegal fishing and illegal gambling in Siargao Island. I just don't pick and value those rumours because the sources are not credible and I guessed that they only watched some Tagalog movie with portrayed bad judge in the story. There were also rumours from nearby towns that Siargao MCTC Judge Exequil Dagala maintained private armed men and owned some high powered firearms, he furthermore maintained several mistresses. Some of those rumours were accidentally discovered personally be me on that day of September 29, 2015.

¹¹ Id. at 1, Office of the Court Administrator's Report.



After both sides was advised by the policemen to settle the concern to barangay office, I initiated to talked with my neighbour who was the owner of lot wherein Judge Dagala recently made illegal logging activity. She then revealed that his son was able to take picture and video of the misconduct made by Judge Dagal but she was afraid to make a complain. I then encourage her to do so but she suggested making a secret transmittal of the evidence to the Ombudsman because she was very afraid of the consequence and she asked my assistance.

In this regard, we are respectfully forwarding the attached email pictures and video of unimaginable actuation of Judge Exequil Dagala. He led the illegal logging activity in the land he doesn't own. He intimidated the peaceful loving residents of San Isidro by his carried armalite firearm. We don't believe that those deeds of Judge Dagala are within the bounds of the law and the custom of a public official and as a Judge of the court.¹² (Grammatical errors in the original)

The photos and video clips were later transmitted to the Office of the Ombudsman, where the anonymous complaint was initially filed.¹³

The complaint was mainly about the illegal logging activity and the use of a firearm by Judge Exequil Dagala (Judge Dagala). The anonymous letter mentioned rumors about "illegal logging, illegal drugs, illegal fishing and illegal gambling" as well as maintenance of "private armed men and . . . some high powered firearms." It also mentioned that he "maintained several mistresses." The complainant, however, labelled all these as rumors, which he or she did not take seriously. Complainant mentioned, "I just don't pick and value those rumours because the sources are not credible and I guessed that they only watched some Tagalog movie with portrayed bad judge in the story."

The relationship to Judge Dagala and the motive of the complainant was not apparent in the letter. The complainant also did not raise the alleged immorality of the judge. If at all, he or she mentioned it only in passing, qualifying the matter as a rumor.

On October 12, 2015, acting on the Ombudsman's Indorsement, the Office of the Court Administrator directed then Executive Judge Victor A. Canoy (Executive Judge Canoy) of the Regional Trial Court of Surigao City in Surigao del Norte "to conduct a discreet investigation and submit a report on the allegations against Judge Dagala."¹⁴

¹² Id. at 84, Office of the Ombudsman of Mindanao's Letter dated September 30, 2015.

¹³ Id. at 2, Office of the Court Administrator's Report.

¹⁴ Id. at 59, Office of the Court Administrator's Memorandum.



Executive Judge Canoy submitted a report to the Office of the Court Administrator on January 29, 2016.¹⁵ The Office of the Court Administrator summarized his findings as follows:

On 29 January 2016, then Executive Judge Canoy submitted a Report (with enclosures) to this Office which essentially stated that after an investigation, he found that – a) the complainant was a certain Luzminda Pacellos Matugas, a teacher from Brgy. Nuevo Campo, San Benito, Surigao del Norte; b) the cutting of trees took place in Sanglay, Brgy. Pelaez, San Isidro, Surigao del Norte; c) the “hambabayod trees” involved were claimed by Ms. Matugas, while the adjacent landowner, Nathaniel Requirme, also claimed the same as his; d) police investigation reveals that the subject trees were allegedly sold by Requirme to Judge Dagala; hence, it is for this reason that he was present during the subject incident; e) the Chief of Police could not confirm the allegation that Judge Dagala was armed at that time; f) the incident is still subject of an ongoing police investigation; and g) the alleged illegally cut trees were still in the area. Executive Judge Canoy posits that unless Ms. Matugas comes forward and present evidence to support her allegations, her complaint, as well as that of the anonymous complainant, will not prosper.¹⁶

The report of Executive Judge Canoy noted the ongoing investigation relating to illegal cutting of trees. It also mentioned that the “Chief of Police could not confirm the allegation that Judge Dagala was armed at that time.” Also, it clearly did not cover substantiation of rumors relating to the alleged immorality of Judge Dagala.

In the meantime, on November 13, 2015, the Office of the Court Administrator requested the National Bureau of Investigation of CARAGA Region XIII to conduct its own discreet investigation on Judge Dagala.¹⁷ It was this report that seemed to introduce details regarding his alleged immorality.

The report dated February 11, 2016 of the agent in charge of the National Bureau of Investigation substantially reads as follows:

01. This refers to a complaint being transmitted by the Office of the Court Administrator of Supreme Court, Manila for discreet investigation and report against MCTC Dapa-Socorro, Surigao del Norte Judge Exequil L. Dagala for alleged involvement in illegal drugs, illegal logging and other illegal activities;
02. This case was assigned to the undersigned on December 14, 2015 and come up with the following findings:

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 2, Office of the Court Administrator’s Report.



- a) Judge Exequil Longos Dagala (Judge Dagala) is a resident of San Jose St., Del Carmen, Surigao del Norte, Siargao Island, Mindanao;
- b) As a result of the Investigation and verification conducted from the Philippine Statistics Authority (PSA), Judge Dagala was legally married to Gilgie Consigo Gersara on July 18, 2006 and this marriage was solemnized at the Office of the Municipal Mayor of Del Carmen, Surigao del Norte. However, they have no children in their marriage;
- c) Further, Judge Dagala had impregnated three (3) different women respectively describe as follows:

Name of children	Date of birth	Gender	Name of mothers	Document	Registry number
1. Lovelle Fatima Escuyos Dagala	October 13, 2000	Female	Lovella Madamba Escuyos	Cert.of Live Birth	Registry no. 2005- 24
2. Letti Duane Erong Dagala	March 5, 2007	Female	Crissan Roselle Mullanida Erong	Certificate of Live Birth	Registry no. 2007- 5007
3. Vince Ezekiel Petallo Dagala	March 24, 2008	Male	Genylou Cortez Petallo	Certificate of Live Birth	Registry no. 2008- 3920

03. Before, Judge Dagala was married to Gilgie, he begot a child from Lovella Madamba Escuyos on October 13, 2000. The child was acknowledged on January 3, 2005 pursuant to R.A. 9255;
04. On March 5, 2007, Letti Duanne Erong Dagala was born to a 21 years old student named Crissan Roselle Mullanida Erong. In the said birth certificate, the name of the father is Exequil Longos Dagala whose occupation is Judge;
05. Then, on March 24, 2008, Exequil Dagala had sired a son named Vince Ezekiel Dagala from Genelou Cortez Petallo, an incumbent Barangay Captain in Barangay Halian, Del Carmen, Surigao del Norte;
06. After two years of Exequil's married to Gilgie Gersara Dagala, they agreed to live separately. His wife is presently working as Local Treasury Operation Officer IV at the City Treasury Office in Surigao del Norte. Judge Dagala provided monthly support to his wife Gilgie amounting to Php 10,000.00;
07. Verification conducted on the alleged illegal logging activities of Judge Dagala, the undersigned had found out that an incident in the year 2014, a certain Genelou C. Petallo, mother of his son Vince Exequil, appeared at the Office of the Department of Environment and Natural Resources (DENR) in Del Carmen, Surigao del Norte

(see DENR reports and documents) when hardwood furnitures were confiscated by their personnel;

08. The said furnitures being confiscated were believed to be owned by both Judge and Genelou Petallo because in the place they were known collectors of driftwoods and hardwoods. In fact, hardwood lumbers and driftwoods were utilized as fence in his house (see pictures);
09. Residents of Siargao Island alleged that Bgy. Captain Genelou C. Petallo and Judge Dagala are living together in their house at Del Carmen, Surigao del Norte;
10. On the other hand, Mr. Sergio Tiu Comendador, Judge Dagala's court (MCTC) Interpreter at Del Carmen, Surigao del Norte was recently arrested during the buy bust operation conducted by Philippine National Police of Dapa, Surigao del Norte;
11. Finally, Judge Dagala is alleged to be the owner of Sugba cockpit in Km. 1, Del Carmen, Surigao del Norte, a name similar to his beach resort near Del Carmen, Surigao del Norte. The cockpit was allegedly sold to Marites Borchs for about Php 550,000[.]¹⁸ (Grammatical errors in the original)

On April 25, 2016, Judge Dagala was asked to comment on the Anonymous Complaint dated September 30, 2015.¹⁹ The order from the Office of the Court Administration reads in its material portions as follows:

A preliminary investigation was conducted on the matter which yielded the following information:

- 1) that on July 18, 2006, you were legally married to Gilgie Consigo Gersara, but had no children;
- 2) that you have impregnated three (3) different women and sired the following children, who are named below:

Name of Mother	Name and Date of Birth of the Child	Certificate of Live Birth Registry Number
1) Lovelle Madamba Escuyos	Lovelle Fatima Escuyos-Dagala- October 13, 2000	Reg. No. 2005-24
2) Crissan Roselle Mallanida Erong	Letti Duane Erong Dagala- March 5, 2007	Reg. No. 2007-3007
3) Genelou Cortez Petallo	Vince Ezekiel Petallo Dagala- March 24, 2008	Reg. No. 2008-3920

- 3) that upon investigation conducted on your alleged illegal logging activities, it was found out that in 2014, a certain Genelou C. Petallo appeared at the office of the Department of Environment and Natural Resources (DENR), Del Carmen, Surigao Del Norte because the latter

¹⁸ Id. at 69-71.

¹⁹ Id. at 65-66, Office of the Court Administrator's 1st Indorsement.

confiscated the hardwood furniture which was believed to be owned by you and Ms. Petalla given that you are known collectors of driftwood and hardwood in Del Carmen, Surigao Del Norte, and in fact, the fence of your house are made of hardwoods and driftwoods;

- 4) that on the allegation of illegal drugs activities, the investigation report shows that Sergio Tiu Comendador, Court Interpreter at the MCTC, San Isidro, Siargao Island, Surigao del Norte, was recently arrested in the buy bust operation conducted by Philippine National Police, Dapa, Surigao del Norte; and
- 5) that you are known to be the owner of Sugba cockpit located at Km. 1, Del Carmen, Surigao Del Norte, a name similar to your nearby beach resort which was sold to Marites Borchs for around Five Hundred Fifty Thousand Pesos (P550,000.00).

In this regard, you are hereby directed to COMMENT on the matter within ten (10) days from receipt of this Indorsement. A copy of the said anonymous letter-complaint, certificate of marriage and three (3) Certificate[s] of Live Birth are herewith attached. Preferential attention on this matter is expected.²⁰

Though the order to comment attached a copy of the Anonymous Complaint, it did not mention his missing entries in his Personal Data Sheet. It focused on his allegedly having “impregnated three (3) different women.” Neither did it mention his possession of any unregistered firearm. The Court Administrator did not reveal that he had photos and video clips in his possession. It appears that he also did not furnish copies of these pieces of evidence to the respondent. His focus was only on the children of the respondent.

Judge Dagala filed his Comment²¹ on August 21, 2016.

Understandably, he had no comment regarding the incident which led to the anonymous complaint, the alleged unregistered firearm, and his missing entries in his Personal Data Sheet. The Court Administrator did not require him to comment on these matters.

His manifestation regarding his marriage to Gilgie Gersana²² and his three children (3) was as follows:

It is of public knowledge that I was married on July 15, 2006 to Gilgie Gersana not July 18, 2006 as alleged on the anonymous letter. My wife and I had been sweetheart for almost 2 years. Before our wedding I

²⁰ Id.

²¹ Id. at 24–27.

²² Judge Dagala referred to his wife as “Gilgie Gersana” in his Comments and Manifestation while the 1st Indorsement of the Office of the Court Administrator and the Memorandum of the National Bureau of Investigation, CARAGA Region XIII named her as “Gilgie Gersara.”

had no idea that she cannot give me a baby of our own. Till after months of our co-habitation she was diagnosed to have tumor in her ovary. I accompanied her to Cebu for medication hoping that God will ultimately give us a blessing that we want. Not long after, her doctor advised to (detach) her uterus to prevent further damage, but will incapacitate her to give birth. Before our marriage tough, I already have a daughter named Fatima Lovelle Dagala born in the year 2000 with Lovelle Escuyos as mother but Fatima lives in her mother's house and the latter exercise parental authority over her. During our marriage GILGIE and I were able to build our cockpit arena at the Municipality of Del Carmen because she also earn income as market supervisor of the town. I was then a prosecutor assign at Cebu during our marriage and Gilgie lives at Surigao City, her place of residence. Because of constant fighting in our married life, Gilgie decides to go back to Surigao City for good, while I stay solo in the house of my parents at Del Carmen. Admittedly, without any remorse, I was able to impregnate the above mentioned lads. To err is human your honors and to forgive is divine, My wife Gilgie knows of the existence of my son and daughter, before and after our marriage, but did not interpose any objection, knowing fully my desire and ambition to have babies. She learned to forgive and forget me, and impliedly submits to the notion that we are not really meant for each other and for eternity. I have a sister named Maritess who permanently lives in turkey and married a citizen thereat. The house were I live in Del Carmen is owned by my sister she renovated the said house and spend over half a million pesos to make it presentable. I am just an administrator of the same with privilege to stay and use the said house, while my sister is in Turkey.²³ (Grammatical errors in the original)

The Court Administrator's report did not disclose his discovery of missing entries in the respondent's Personal Data Sheet. The Court Administrator also did not mention whether his findings as regards the respondent's records with the Firearms and Explosives Unit were transmitted to the respondent for his comment. There was nothing in his report which showed that he requested the respondent judge to produce any license for any firearm or to confirm that he was the person shown in the photographs and the video clips in his possession.

It used to be that administrative cases against judges charged with grave offenses were in the nature of criminal or penal proceedings.²⁴ In recent years, this Court has recognized that judges were not a special species of public servants that needed a higher quantum of proof to be held accountable.²⁵ Administrative cases against judges then took a turn for requiring merely substantial proof, a lower quantum than proof beyond reasonable doubt.²⁶ However, this development did not compromise the requirement of due process.

²³ Id. at 24–25.

²⁴ *Macias v. Judge Macias*, 617 Phil. 18, 26–27 (2009) [Per J. Nachura, Third Division].

²⁵ Id.

²⁶ Id., See also *Avanceña v. Judge Liwanag*, 454 Phil. 20 (2003) [Per Curiam, En Banc]; *Resngit-Marquez v. Judge Llamas*, 434 Phil. 184 (2002) [Per Curiam; En Banc].



To be informed of the accusations against him and be given the opportunity to answer are constitutional guarantees that eluded Judge Dagala in the proceedings before the Office of the Court Administrator. Charges of dishonesty in his Personal Data Sheet, his use of and access to a high-powered firearm that he was not authorized to own, and the video footage of acts as specified in the Anonymous Complaint were not presented to Judge Dagala. Neither was respondent informed of the manner in which these pieces of evidence were obtained against him.

It was not on record when the Office of the Court Administrator obtained a copy of Judge Dagala's Personal Data Sheet dated October 18, 2006.²⁷ Meanwhile, on August 19, 2016, the Office of the Court Administrator received the video recording of the incident in the Anonymous Complaint.²⁸ Judge Dagala filed his Comment four (4) days later, on August 23, 2016.²⁹ On August 25, 2016, the Philippine National Police Firearms and Explosives Office issued a Certification that Judge Dagala was not a licensed or registered "firearm holder of any kind and caliber."³⁰ Records disclose that he was not required to comment on these matters and was not even made aware that these pieces of evidence existed and were in the Office of the Court Administrator's possession.

I have no issues about the supervisory role this Court has over all other courts and personnel, the manner in which complaints against erring judges may be filed, and our mandate to conduct preliminary investigations. What I have qualms about is the piecemeal erosion of due process by the very people who must be at the forefront of ensuring its diligent application.

III

We must distinguish between the standards we require of judges on one hand and those that are required of priests, imams, and other religious leaders on the other. A lawyer and a judge take a specific oath of office. A lawyer and a judge should not be required to be saints. We should not confuse the morality of our secular law with the ethical requirements of our religious faiths.

The vulnerability of having committed mistakes in the past even assists the human incumbents of our judicial offices. Past mistakes properly acknowledged, addressed, and atoned broaden the understanding of a judge of human frailty and the possibility of forgiveness from those he or she has wronged. Properly addressed, human sins inscribe compassion for our

²⁷ *Rollo*, pp. 7, 14–17.

²⁸ *Id.* at 5, 28.

²⁹ *Id.* at 24–27.

³⁰ *Id.* at 13.



judges. Within the limits of the law, he or she will be able to calculate the proper reliefs of penalties appropriate to the action.

Implicit in this understanding is the view that our judiciary is not simply a mechanical cog that dispenses specific penalties without full regard for the context of the facts proven. If this were so, current technology could simply be harnessed to substitute judges and justices, even for this Court, with robots. The legal system composed of the branches that promulgate, execute, and interpellate the law should not be seen as less than human institutions.

Justices should be able to see the general norms that would apply given the set of facts that can be reasonably inferred from the evidence. However, in interpreting the facts, we should always examine the premises we have that are articulated by our conception of our realities that provide us with the basis for our inferences.

Judge Dagala admitted that he has sired children with women other than his wife.³¹ However, this admission, taken alone, is inadequate to prove immorality.

IV

The easiest and most objective conception of the kind of immorality sufficient to remove a judge is one which also amounts to an illegal act. Following this strand of logic, the evidence presented does not seem to be sufficient.

The Revised Penal Code punishes indiscretion through the offenses of Concubinage or Adultery. None of the elements of these offenses were sufficiently proven in the records of this case.

Concubinage is committed by a married man who has carnal knowledge of a woman not his spouse under scandalous circumstances.³² It is not simply the presence of illicit carnal knowledge that the law requires. There must be separate proof that this was done “under scandalous circumstances,” different from the act of sexual intercourse.³³ Obviously,

³¹ Id. at 25.

³² REV. PEN. CODE, art. 334 provides:

Article 334. Concubinage. — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prisión correccional in its minimum and medium periods.

The concubine shall suffer the penalty of destierro.

³³ Id.

there is no evidence in the record that can remotely be considered as sufficient for this purpose.

Adultery, on the other hand, is committed by a married woman who has a relationship with a man who is not her husband.³⁴ For adultery to happen, it is not material that the man is likewise married.³⁵ Likewise, the man may be convicted on the basis of conspiracy with the married woman.³⁶

Again, the records of the case are bereft of proof that the women, with whom the respondent had his children, were married. The lack of this evidence, thus, leads to a reasonable conclusion that adultery may not have been committed.

More importantly, the offenses of concubinage or adultery cannot be committed because, in my view, it violates the equal protection clause of the Constitution. The provisions, promulgated in 1939, are now anathema to the requirement of “fundamental equality before the law of men and women”³⁷ now prescribed in the Constitution, required by our treaty commitments,³⁸ and exacted as standard by our statutes.³⁹ Should evidence have been presented to amply prove concubinage or adultery in this case, the offenses would still have had to hurdle doubt as to its constitutionality and illegality. These would have been sufficient even to create reasonable doubt that should be appreciated in favor of the respondent.

Besides, no prosecution for adultery or concubinage could prosper unless it is brought by the offended party.⁴⁰ This acknowledges the choices

³⁴ REV. PEN. CODE, art. 333 provides:

Article 333. Who are Guilty of Adultery. — Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by prisión correccional in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.

³⁵ See *The United States v. Topiño*, 35 Phil. 901 (1916) [Per J. Trent, Second Division].

³⁶ Id.

³⁷ CONST., art. II, sec. 14.

³⁸ See *Charter of the United Nations*, 1 UNTS XV (1945), art. 1(3). The Charter was ratified by the Philippines on October 11, 1945.

See *Universal Declaration of Human Rights*, 217 A (III) (1948), Preamble, art. 1, 7, and 16. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948 where the Philippines voted for its approval;

See *Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations, Treaty Series, vol. 1249, p. 13 (1979), art. 15. The Convention was ratified by the Philippines on August 5, 1981.

³⁹ Rep. Act No. 9710 (2009) or The Magna Carta of Women.

⁴⁰ REV. PEN. CODE, art. 344, paragraphs 1 and 2 provide:

Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. — The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

P

of the offended party, the desire to assert autonomy, the desire to settle the indiscretions within the confines of family, or the wish not to add more to the suffering of all the children involved. All these purposes would be undermined if we were to allow a stranger, like the neighbor in this case, to initiate the complaint.

Ratio legis est anima.

V

The other laws that would have been violated are the statutes that hope to negate the patriarchy in our culture. Among these are the Anti-Sexual Harassment Act⁴¹ and the Anti-Violence Against Women and Their Children Act.⁴²

The Anti-Sexual Harassment Act would apply if there was a power relationship present as characterized by the law.⁴³ For example, it would have been breached if there was evidence that respondent took advantage of his official position to entice carnal knowledge of a woman who was not his spouse. Again, there is no iota of evidence that will lead this Court to properly infer that this statute was breached.

The Anti-Violence Against Women and Children Act proscribes many forms of abuses. Section 5, paragraphs (h) and (i) describe those that can be present in the context of extra-marital affairs. Thus:

Section 5. Acts of Violence Against Women and Their Children. –
The crime of violence against women and their children is committed through any of the following acts:

....

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. . .

....

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or

⁴¹ Rep. Act No. 7877 (1995).

⁴² Rep. Act No. 9262 (2004).

⁴³ Rep. Act No. 7877, sec. 3 provides:

Section 3. Work, Education or Training-related Sexual Harassment Defined. — Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act. (Emphasis supplied)

custody of minor children or denial of access to the woman's child/children.

Again, the records of this case are bereft of evidence to conclude that there are sufficient acts which constitute all the elements of all the offenses enumerated in these provisions. Clearly, extramarital affairs do not per se cause abuse to either women or the children in each of these relationships.

In any of these offenses, the participation of the victimized woman or child to present the evidence would be necessary. Again, in this case, none of the women or the children involved was presented in evidence. The complaint was anonymous.

VI

I propose the following guidelines:

If at all, any complaint for immorality should not be entertained except when it is commenced by its victims. That is, the betrayed spouse, the paramour who has been misled, or the children who have to live with the parent's scandalous indiscretions.

I accept that in some cases, especially where there is some form of violence against women and children within the families affected, it would be difficult for the victims to come forward. It should only be then that a third party's complaint may be entertained. The third party must show that it acts for the benefit of the victims, not as a means to cause more harm on them. Furthermore, the inability of the victims must be pleaded and proven.

In my separate opinion in *Tuvillo v. Laron*,⁴⁴ I concurred with the dismissal of a judge for immorality and gross misconduct based on the complaint of the parties directly affected—the mistress and her husband. In *Perfecto v. Esidera*,⁴⁵ this Court through my ponencia, did not sanction a judge for immorality based on the complaint of a third person. She was suspended for violating Canon 1 of the Code of Professional Responsibility when she knowingly contracted a marriage before a solemnizing officer who had no license to do so. I remain consistent in my view that immorality, as basis for administrative complaints, cannot be based on religious grounds:

Thus, for purposes of determining administrative liability of lawyers and judges, “immoral conduct” should relate to their conduct as

⁴⁴ See Separate Opinion of J. Leonen in *Tuvillo v. Laron*, A.M. No. MTJ-10-1755, October 18, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2016/october2016/MTJ-10-1755_leonen.pdf> [Per Curiam, En Banc].

⁴⁵ 764 Phil. 384 (2015) [Per J. Leonen, Second Division].

officers of the court. To be guilty of “immorality” under the Code of Professional Responsibility, a lawyer’s conduct must be so depraved as to reduce the public’s confidence in the Rule of Law. Religious morality is not binding whenever this court decides the administrative liability of lawyers and persons under this court’s supervision. At best, religious morality weighs only persuasively on us.⁴⁶

I appreciate the ponente’s acknowledgment that “immorality only becomes a valid ground for sanctioning members of the Judiciary when the questioned act challenges his or her capacity to dispense justice.”⁴⁷ This affirms this Court’s principle that our jurisdiction over acts of lawyers and judges is confined to those that may affect the people’s confidence in the Rule of Law.⁴⁸ There can be no immorality committed when there are no victims who complain. And even when they do, it must be shown that they were directly damaged by the immoral acts and their rights violated. A judge having children with women not his wife, in itself, does not affect his ability to dispense justice. What it does is offend this country’s predominantly religious sensibilities.

We should not accept the stereotype that all women, because they are victims, are weak and cannot address patriarchy by themselves. The danger of the State’s over-patronage through its stereotype of victims will be far reaching. It intrudes into the autonomy of those who already found their voice and may have forgiven.

The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing legitimate relationships, or (c) are prima facie shown to have violated the law. The negligence or utter lack of callousness of spouses who commit indiscretions as shown by their inability to ask for forgiveness, their concealment of the act from their legitimate relationships, or their lack of support for the children born out of wedlock should be aggravating and considered for the penalty to be imposed.

VII

Many of us hold the view that it is unethical to breach one’s fervent commitments in an intimate relationship. At times however, the breach is not concealed and arises as a consequence of the couple’s often painful realization that their marriage does not work. In reality, there are couples who already live separately and whose children have grown and matured

⁴⁶ Id. at 399–400.

⁴⁷ *Per Curiam* p. 17.

⁴⁸ *Perfecto v. Esidera*, 764 Phil. 384, 407 (2015) [Per J. Leonen, Second Division].



understanding that their environment best nurtured them when their natural parents do not live with each other with daily pain.

In this case, the wife of the judge may have chosen to live separately. They have been childless due to an unfortunate disease suffered by the wife. It appears from the report of the National Bureau of Investigation that the wife had been regularly receiving support from the judge. There are no complaints from any of the children fathered by the respondent. Finally, there is the unrebutted manifestation of the judge that his wife has forgiven and even forgotten him.

It appears that the judge's indiscretions, which were rumors from the point of view of the Anonymous Complaint and unmentioned in the report of the investigating judge but which became the main basis for the interim report of the male agent of the National Bureau of Investigation, are now the main basis for dismissing the respondent. All these without consulting the spouse or any of his children. All these without regard to whether their lives should again be disrupted.

It is time that we show more sensitivity to the reality of many families. Immorality is not to be wielded high-handedly and in the process cause shame on many of its victims. It should be invoked in a calibrated manner, always keeping in mind the interests of those who have to suffer its consequences on a daily basis. There is a time when the law should exact accountability; there is also a time when the law should understand the humane act of genuine forgiveness.

ACCORDINGLY, I concur in the result in so far as Judge Exequil L. Dagala is found GUILTY of GROSS MISCONDUCT and in the penalties imposed.


MARVIC M.V.F. LEONEN
Associate Justice

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