

MALACANANG  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 148

SUSPENDING MR. RESTITUTO M. DURAN FROM OFFICE AS JUSTICE OF THE  
PEACE OF BASEY, SAMAR.

This refers to two administrative cases against Justice of the Peace Restituto M. Duran of Basey, Samar, which were investigated by a District Judge of Samar.

In Administrative Case No. 232, respondent is charged with having convicted complainant Valeriano C. Yancha in Criminal Case No. 2368 of violation of Municipal Ordinance No. 14, s. 1946, of the municipality of Basey, solely for reasons of "personal hate, vengeance and revenge," said ordinance having been disapproved by the Provincial Board of Samar in 1947. He is also charged with having insulted complainant in the presence of many people during the trial by stating that complainant, although a lawyer, refused to pay a P48 debt to the municipality which shewed "his intention to cheat our municipal government."

The records show that complainant was originally accused of violating Municipal Ordinance No. 14, s. 1946, by the Municipal Treasurer of Basey for his failure to pay municipal license fees on certain fishing privileges. At the trial, accused Yancha asked for the dismissal of the case on the ground that Municipal Ordinance No. 14, s. of 1946, had been disapproved by the Provincial Board in Resolution No. 331, s. of 1947. Instead of dismissing the case, the respondent ordered the municipal treasurer to amend his complaint so as to charge the accused with violation of Ordinance No. 18, s. of 1944. Respondent reasoned that inasmuch as Ordinance No. 14, s. of 1946, which sought to amend Ordinance No. 18, s. of 1944, had been disapproved, the latter ordinance remained in full force and effect. Not satisfied, Yancha filed a petition for prohibition and for a writ of preliminary injunction, assailing respondent's order to amend the complaint as an abuse of discretion.

The Court of First Instance of Samar agreed with respondent's theory and upheld the legality of his action, citing Rule 115, Section 12, of the Rules of Court and the case of U.S. vs. Tan Boming, 48 Phil. 877. Upon the resumption and conclusion of the trial on the merits, the respondent justice of the peace convicted the accused of violation of Ordinance No. 18, s. of 1944.

There was no evidence presented to prove that respondent was motivated by any improper motive in his conduct of the above case.

*abc Duran, Restituto M.*

To disprove the allegations that his actions were motivated by hatred or revenge, the respondent pointed out that he ordered the temporary dismissal of another case (for estafa) against Yancha for lack of sufficient evidence.

The respondent is therefore exonerated in Administrative Case No. 232.

In Administrative Case No. 233, respondent is charged with having had carnal knowledge by force of complainant Mrs. Medelina Viojan. Complainant declared that on September 20, 1954, she met respondent on a motorboat bound for Marabut from Tacloban City. Her purpose in going to Marabut was to settle a land dispute. The late Mayer Ferreras, who was her relative, suggested that she approach the justice of the peace of Basey to help her. On the evening of September 22, 1954, there was a dance which complainant and respondent attended together with Andrea Genetea and Sixta Ferreras. She was invited to have refreshments in a near-by store, but as that store was closed, they proceeded to Andrea's house to where respondent followed, bringing soft drinks with him. While she was drinking, Andrea and Sixta walked out slowly to the porch, and thereupon the respondent embraced and kissed her, raised up her dress and inserted his fingers into her private parts, despite her resistance. Julita Demille corroborated the testimony of complainant, stating that she saw respondent embracing and kissing complainant in the house of Andrea Genetea after the dance.

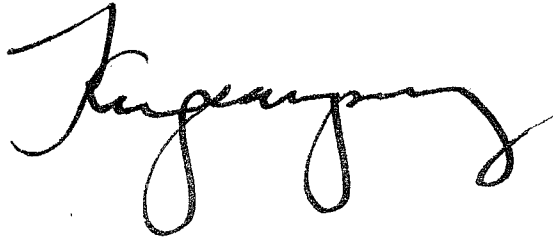
Complainant declared further that on the same night she slept with Sixta in the house of Mayer Ferreras, where the respondent was also staying. The incident in Andrea's house bothered her so much that she left her bed and scolded the respondent for what he had done. Afterwards she went back to bed, but around three o'clock in the morning she awoke with the respondent lying with her. She resisted and wanted to scream but the respondent put his hand on her mouth and she saw a gun. For this reason she was compelled to submit to his lust.

Respondent denied having criminally attacked the complainant. But it is obvious that he had illicit relation with her. I believe, however, that the cohabitation was effected by mutual consent. The complainant's testimony is too crude to be convincing.

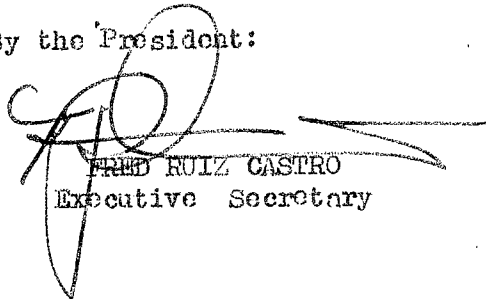
The offense committed by the respondent is adultery, the complainant being a married woman. Although it is of private nature punishable as a felony only upon complaint of the aggrieved husband, who does not appear to have instituted any criminal action, it is obvious that the respondent is guilty of immorality.

Wherefore, and upon the recommendation of the Secretary of Justice, Mr. Restituto M. Duran is hereby suspended from office as justice of the peace of Basey, Samar, for a period of six months without pay, effective upon receipt of notice hereof.

Done in the City of Manila, this 26<sup>th</sup> day of October, in the year of Our Lord, nineteen hundred and fifty-five, and of the Independence of the Philippines, the tenth.



By the President:



FERDINAND R. MARCOS  
Executive Secretary