

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 27

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE WITH
FORFEITURE OF BENEFITS UNDER THE LAW OF ASSISTANT
PROVINCIAL PROSECUTOR CARLOS B. BARBERO OF ABRA**

This is an administrative complaint initialed by the Department of Justice against Assistant Provincial Prosecutor Carlos B. Barbero of Abra, for serious misconduct inimical to public interest and gross dishonesty.

Respondent Provincial Prosecutor Carlos B. Barbero was charged administratively for having filed a motion which led to the dismissal of two (2) criminal complaints for Robbery with Homicide (Julie Dabbay Case) and Robbery with Rape (Juliet Velasco case) docketed as Criminal Case Nos. 1287 and 1288, respectively, of the Regional Trial Court of Abra.

The factual milieu of the administrative complaint as narrated in the letter-memorandum of then Secretary of Justice (now Senator) Franklin M. Drilon dated August 25, 1994, are as follows:

"The formal charge in the administrative case against respondent prosecutor thus reads:

1. That in the complaints for Robbery with Homicide and Robbery with Rape (Crim. Case Nos. 1287-1288) filed before the Regional Trial Court of Abra, Branch 2, you allowed the two (2) witnesses, Saelito Sabaot and Michelle Bringas (who were then the subject of a motion in court to be discharged as state witnesses), to be induced and made to recant without assistance of counsel, their previous voluntary confessions which were duly executed with the assistance of former Prosecutor and now PAO lawyer Sergio Paredes and freely subscribed before Asst. provincial Prosecutor Edgardo Flores;



2. That as trial prosecutor, you failed to require Sabaot and Bringas to take the witness stand to testify and be cross examined on their alleged recantations so as to coneract the same and introduce countervailing proof of their previously counseled confessions with the end in view of determining the circumstances and the motivation of their alleged recantations;

3. That you allowed incompetent evidence to be the basis for the dismissal of the case wherein the affidavits of desistance and the recantations were merely marked as exhibits but never formally offered in evidence; thus, violating Rule 132 of the Rules of Court;

4. That you committed gross dishonesty when you denied under oath having made the motion in court to dismiss the case it appearing from the transcript of stenographic notes of the hearing of October 14, 1993 that it was you who moved for the dismissal of the case.'

"Required to comment, respondent prosecutor denies the charges leveled against him and alleges that there is no way for him to have allowed Sabaot and Bringas to be induced and made to recant their previous voluntary confessions because they were not under his protective custody. Further, respondent prosecutor states that the documents were not merely marked but were submitted to the court which subsequently gave it probative value. Respondent also claims that he did not question the due execution of these documents because he was the administering officer thereof.

"As to the charge of dishonesty, respondents prosecutor pointed out that his statement in his letter dated January 10, 1994 that '(i)t was accused, thru their counsel who moved for the dismissal of the case', has reference to the October 11, 1993 hearing. He admitted though that he moved for their dismissal on October 14, 1993, in line with the accused's constitutional rights to be presumed innocent and to a speedy disposition of their cases."



3

In finding the respondent guilty as charged and recommending his dismissal from the service with forfeiture of benefits, the Department of Justice, in the said letter-memorandum, made the following findings and conclusions, to wit:

“After a painstaking evaluation of the evidences on record, State Prosecutor Menrado V. Corpuz, who conducted the formal investigation hereof, found respondent prosecutor guilty as charged. We agree with his evaluation and further sustain his recommendation that respondent prosecutor be dismissed from the service.

“The dismissal of Crim. Case No. 1287 (Robbery with Homicide) and Crim. Case No. 1288 (Robbery with Rape) on motion of respondent prosecutor that the guilt of accused cannot be proven beyond reasonable doubt in view of the retractions of the witnesses and the lack of interest of the parents of the victims, is highly reprehensible. Respondent-prosecutor’s precipitate act in moving to dismiss the subject cases despite sufficient evidence to secure the convictions of the seven (7) accused is the kind of gross and flaunting misconduct that so quickly and surely corrodes the respect for the law which is vital in civilized society.

“Indeed, notwithstanding the apathy of Bringas and Sabaot to the prosecution’s cause, respondent may call on Atty. Sergio Paredes (assisting counsel of Sabaot and Bringas) when they executed their extrajudicial confession, Prosecutor Edgardo Flores (administering officer) and SPO2 Antonio Carpio/SPO1 Samson Dumalo (investigating officers) who can attest to the voluntariness and regularity of the confession. As between the extrajudicial confession of Sabaot and Bringas and their Joint-Affidavit of Recantation, respondent prosecutor should have given more importance to the former there being no showing that it was obtained through violence, intimidation, threat, or promise of reward or leniency (People vs. Parojinog, 203 SCRA 673).

“As a ranking and veteran prosecutor, respondent prosecutor knows too well that a recantation does not necessarily cancel an earlier declaration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and especially the demeanor of the witness on the stand. Indeed, retractions are mere afterthoughts which should be received with caution as otherwise it



could make a solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. For these reasons, respondent prosecutor should not have initiated the dismissal of the subject cases, but instead insisted for a hearing on the affidavit of recantation of Sabaot and Bringas thereby affording him an opportunity to cross-examine and impeach them on the basis of their earlier extrajudicial confession which is presumed to have been regularly executed. In this way, the court would not simply admit as gospel truth such recantation but have to weigh it vis-a-vis the affiants previous confession. Respondent prosecutor's serious misconduct is even made more manifest when he gave credence to the Affidavits of Desistance of the parents of the victims knowing only too well that such desistance is unavailing in criminal cases because as crimes are an outrage to the sovereignty of the state, its vindication must be in the name of the sovereign power.

"In allowing the introduction of evidence to be used as basis for the withdrawal of the criminal cases albeit the same had not been formally offered in evidence, respondent prosecutor had exposed his total disregard of, or indifference to, or even ignorance of the procedure laid down by law. Respondent's intentional disregard of well known legal precepts can be characterized as gross misconduct. By his acts, respondent prosecutor had allowed the seven (7) accused to go unpunished resulting in public indignation which adversely affected the faith and confidence of the public in the administration of justice.

"Respondent prosecutor's argument that as administering officer of the Joint-Affidavit of Recantation, he is barred from questioning its due execution is erroneous in the light of the parties' earlier confession which enjoys the presumption of regularity. The rule is that a witness may be impeached by the party against whom he was called by evidence such as statements that he has made at other times but which are inconsistent with his present testimony.

"On this point, respondent prosecutor cannot pass on the blame to Judge Benjamin A. Bongolan even if the latter allowed the documents or evidence to be marked, allowed it to be submitted to the court, admitted the documents, ordered it to be attached to



the records and finally, used and considered the said evidence and documents as the basis for the dismissal of the cases. All these came to pass only because respondent prosecutor had initiated the motion for the dismissal of the cases.

“Respondent is also guilty of gross dishonesty. His assertion that ‘it was accused, thru their counsel, who moved for the dismissal of the cases on October 11, 1993’ has nothing to commend itself. Nowhere in the transcript of the stenographic notes of the October 11, 1993 hearing does it show that Atty. Feir moved for the dismissal thereof. On the contrary, it was respondent prosecutor who moved for such dismissal which was favorably granted by the court as per the TSN of the October 14, 1993 hearing. Whatever his reason was in resorting to such deception, does not speak well of his integrity.

“What is exposed by the evidence adduced in this administrative investigation is the sad spectacle of a public prosecutor who is ignorant of fairly elementary legal principles, exhibits indifference to, and even disdain for the rule of law, applies the law whimsically, capriciously and oppressively, and displays bias and partiality and thereafter would not hesitate to resort to dishonesty to exculpate himself. These characteristics and quirks are impermissible in a public prosecutor.

“Finally, it must be stressed that a prosecutor must conduct himself in such a manner as to merit the respect, reverence and confidence of the people. His conduct must at all times not only be characterized by propriety but must also be above-suspicion. There is thus the utmost need for integrity and dedication in the performance of his function if only to preserve the public trust character of a public office. In these, respondent prosecutor failed miserably. He should not be allowed to stay a minute longer in the prosecution service.”

The actuations of respondent Barbero in the two criminal complaints show his determined effort to disregard existing policies on the prosecution of criminal offenders. The dismissal of the cases, despite the presence of sufficient and independent evidence to secure the convictions of the seven (7) accused, is, to say the least, a highly condemnable act. As a prosecutor, it is his sublime duty to prosecute and to serve the ends of justice without fear or favor, so that all parties who appears to be guilty therefor be meted the

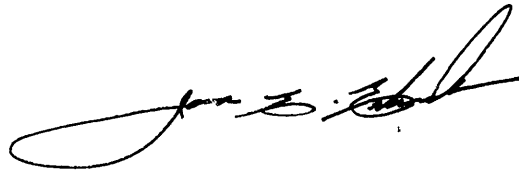


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corresponding penalty regardless of their affiliations. Surely, his alacrity in filing the motion which eventually led to the dismissal of the criminal cases is a conduct that is exactly the opposite of what the government expects of its prosecutors in its vigorous and unrelenting campaign against criminality. His lack of zeal and dedication in pursuing the cause of justice has not only eroded the people's faith in our ability to combat criminals, but also has considerably negated the gains achieved through the years. Given the foregoing factual backdrop, respondent Barbero is absolutely undeserving to continue in the government service. I fully agree with the findings and recommendation of the Secretary of Justice.

WHEREFORE, premises considered, Assistant Provincial Prosecutor Carlos B. Barbero of Abra is hereby DISMISSED from the service, for serious misconduct inimical to public interest and for gross dishonesty, with forfeiture of all benefits under the law.

Done in the City of Manila, this ^{DYK} day of OCTOBER, in the year of Our Lord, nineteen hundred and ninety eight.



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By the President:



RONALDO B. ZAMORA
Executive Secretary