

## EN BANC

[ A.C. No. 4748, August 04, 2000 ]

**VICTORIA V. RADJAIE, COMPLAINANT, VS. ATTY. JOSE O. ALOVERA, RESPONDENT.**

### DECISION

#### PER CURIAM:

Atty. Jose O. Alovera, former Presiding Judge of the Regional Trial Court of Roxas City, Branch 17, faces disbarment for having penned a Decision<sup>[1]</sup> dated January 30, 1995 long after his retirement from the Judiciary on January 31, 1995 which ultimately divested complainant Victoria V. Radjaie of her property in Panay, Capiz.

In an Affidavit-Complaint<sup>[2]</sup> filed before the Office of the Bar Confidant on April 21, 1997,<sup>[3]</sup> complainant sought the disbarment of respondent enumerating the following particulars to support her contention that the questioned January 30, 1995 decision was prepared after the retirement of respondent:

- a) Almost all orders issued by then Judge Alovera prior to his retirement bear the stamp "RECEIVED" by Branch 17 of RTC-Roxas City, with the initial of the one who received it for filing with the court-record except the Order of January 25, 1995 (p. 87 records) admitting, and the Decision dated January 30, 1995 (pp. 88-93, *ibid.*).
- b) It can also be seen that all the orders issued prior to the retirement were all type-written in the same type-[writer] except the January 25, 1995 Order (p. 87) and the Decision (pp. 88-93) and these two (2) documents appear to have been type-written on the same type-[writer].
- c) It is also a source of wonder why plaintiffs formally offered their evidence one year after the last witness was presented last December 10, 1993.

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Plaintiffs had until January 20, 1994 to formally offer their evidence but it took them one (1) year and five (5) days to file such a simple pleading. It goes against the normal human experience when plaintiffs who are allowed to present evidence ex-parte are usually very quick in having things done because there is no opposition but in this case it took plaintiffs a while to formally rest which was only fifteen (15) days prior to the retirement of Mr. Alovera. This timing is highly suspect.

- d) Even plaintiffs' formal offer of evidence showed badges of fraud. It was not received by the trial court. Page 67 shows

this clearly. It would not be surprising if the same was also inserted into the records on a much later date and Atty. Alberto Villaruz must be made to explain this too.

It was dated January 20, 1995 but the date of the Professional Tax Receipt (PTR) of Atty. Alberto A. Villaruz, counsel for the plaintiffs, was issued only on January 31, 1995. This is shown on Page 71 of the records.

e) There is no showing that the January 25, 1995 Order (p. 87) admitting the formal offer was even received by a Court staff for filing with the records.

f) The same can be said of the January 30, 1995 Decision (pp. 88-93) which was allegedly decided five (5) days after the Order admitting the evidence (p. 87) was allegedly issued. What a swift action from a retiring judge.

g) A copy of the Decision was not even sent to the counsel for the plaintiffs but is shown to have been received by one of the plaintiffs only on August 1, 1995 (p. 93).

h) Again, it is beyond the normal experience for a lawyer such as Atty. Villaruz who is a practitioner in the locality and who is in Court almost everyday that he will not follow up if there is already a decision rendered in a case where he was allowed to present evidence ex-parte or even be told about it.

i) The records show that all orders after the retirement of Mr. Alovera bear the stamp "RECEIVED" by the Court staff who received them for filing in the court records.

Traversing the allegations of the Affidavit-Complaint as purely speculative and not based on personal knowledge, the respondent, in his Comment<sup>[4]</sup> dated August 20, 1997, further assailed as simply self-serving complainant's Affidavit-Complaint alleging that a careful scrutiny of the expediente of Civil Case No. V-6186 would reveal that respondent observed due process when he resolved the said case against complainant.<sup>[5]</sup> It was only when Judge Julius Abela, who succeeded him in RTC, Br. 17, Roxas City, annulled, through a resolution, the questioned January 30, 1995 decision, which ostensibly having become final was also executed, did the matter get out of hand.<sup>[6]</sup> His said decision, respondent argued, may only be impeached, annulled or otherwise set aside under three (3) modes,<sup>[7]</sup> all of which were either not availed of by complainant for lapse of time, or like an action to annul the judgment, though still available, should not have been filed in the same court, which rendered the questioned decision, but should have been filed, instead, in the Court of Appeals.<sup>[8]</sup> As to the absence of stamp "RECEIVED" on the questioned decision, respondent shifted the blame to the then OIC Clerk of Court of the said court, Mrs. Nenita Aluad, contending that after the decision was rendered on January 30, 1995, he lost control of it and he surmised that Mrs. Aluad, who had the duty to receive and record the decision, might have lost it "momentarily."<sup>[9]</sup>

In a Resolution<sup>[10]</sup> dated October 22, 1997, this Court referred the instant case to the Office of the Bar Confidant for investigation, report and recommendation. While

in the process of investigation, three (3) incidents occurred, namely:

1. The Integrated Bar of the Philippines (IBP), Capiz Chapter, approved Resolution No. 9, Series of 1997 on December 17, 1997, questioning the order, dated November 28, 1997, of the Regional Trial Court, Br. 17, Roxas City, which ordered the suspension from the practice of law of herein respondent and Atty. Alberto Villaruz;
2. The Court *En Banc*, in its Resolution of December 22, 1997, resolved to issue a temporary restraining order (TRO) in G.R. No. 131505, entitled "Atty. Alberto A. Villaruz vs. Honorable Julius L. Abela," ordering the respondent judge therein to cease and desist from enforcing and/or implementing his questioned order dated November 28, 1997 in Civil Case No. V-6186, which ordered the suspension of Atty. Villaruz; and,
3. Respondent Alovera filed a petition for certiorari before the Supreme Court, entitled "Jose Alovera vs. Victoria Villariez-Radjaie and Judge Julius L. Abela," under G.R. No. 131768, which, at the time was still pending, questioning the Order of November 28, 1997 which ordered respondent's suspension from the practice of law.

Thus, necessitated the filing of the Manifestation<sup>[11]</sup> by the Office of the Bar Confidant on January 27, 1998, inquiring from the Court whether to proceed with the investigation of the case in view of the aforementioned incidents.

On February 18, 1998, the Court directed the Office of the Bar Confidant to proceed with the investigation of the instant case.<sup>[12]</sup>

Judge Julius Abela, Nenita M. Aluad, legal researcher, Teresita V. Bauzon, court stenographer, Concepcion Alcazar, clerk-in-charge of civil cases and special proceedings, all of Regional Trial Court, Br. 17, Roxas City, Rosa Dapat, court stenographer of Regional Trial Court, Br. 15, Roxas City and the complainant herself testified as witnesses for the complainant.

The respondent presented as his lone witness, Mrs. Rosa Dapat, who merely testified on the January 10, 1993 proceedings inside his chambers. Respondent himself did not testify and neither did any other witness testify for him, despite the issuance of subpoena *ad testificandum* on Ireneo Borres and Ludovico Buhat, who both failed to appear at the investigation. In lieu of their oral testimonies, respondent offered and presented their respective affidavits.<sup>[13]</sup> Complainant chose not to object thereto and even waived her right, through her counsel, to cross-examine them.

The established facts, as quoted from the Report dated November 17, 1999 of the Office of the Bar Confidant, are as follows:

On July 2, 1992, the heirs of the late Faustina Borres, Segundina Borres, Felisa Borres, Micaela Borres, Maria Bores, and Sixto Borres (hereinafter "Borres heirs") through their counsel, Atty. Alberto A. Villaruz, filed an action for Partition and Accounting, docketed as Civil Case No. V-6186, with the Regional Trial Court, Br. 15, Roxas City, against herein complainant, Victoria V. Radjaie, who was presumably an heir of the late Faustina Borres. The action sought, among others, the cancellation of

Transfer Certificate of Title No. T-24150 in the name of herein complainant covering a parcel of land with an area of 215,777 square meters situated in Panay, Capiz, and the declaration of the said parcel of land as property commonly owned by the Borres heirs.

On July 16, 1993, Br. 17, to which Civil Case No. V-6186 was re-raffled, declared herein complainant in default and ordered the Borres heirs to present their evidence on July 30, 1993.<sup>[14]</sup>

It was only after three (3) postponements that the Borres heirs were able to start presenting their evidence *ex-parte* on October 8, 1993. For lack of material time, however, the presentation of evidence was again reset to November 22, 1993, which again was postponed and reset to December 10, 1993.<sup>[15]</sup>

On December 10, 1993, there were several criminal and civil actions scheduled for trial, which commenced at about 10:00 in the morning, before Br. 17, including Civil Case No. V-6186, which was listed number four in the court calendar. Judge Alovera presided over the hearing and Teresita V. Bauzon, court stenographer of Br. 17, took down notes of the Proceedings. Atty. Villaruz appeared for the accused in a criminal case<sup>[16]</sup> before Br. 17 at the time. The court had a recess at 11:10 and resumed at 11:35 in the morning. After the hearing of criminal cases was through, Civil Case No. V-6186 was called at about 11:55 in the morning, but the plaintiffs as well as their counsel, Atty. Villaruz, were no longer inside the courtroom. The session thus adjourned at 11:57 in the morning without Civil Case No. V-6186 being heard.<sup>[17]</sup>

At about 11:30 in the morning of the same date, Atty. Villaruz approached Rosa Dapat, who was the court stenographer at the time of RTC, Br. 15, Roxas City, while she was in her office. Atty. Villaruz told her that Judge Alovera was requesting her to assist in the proceedings of Civil Case No. V-6186. At first she was hesitant to accede to the request as Br. 17 had also its own court stenographer. She relented though when told that Br. 17 as well as the other branches had no available court stenographer. She then went to Br. 17 and saw Atty. Villaruz standing by the door of the chambers of Judge Alovera. Atty. Villaruz motioned her to enter the chambers, which is separate from the courtroom. While inside the chambers, she saw Judge Alovera behind his desk and other people whom she did not know. Upon being told that Mrs. Dapat would be the stenographer, Judge Alovera told Atty. Villaruz to start the proceedings. Following the manifestation made by Atty. Villaruz, a witness, whom she later recognized to be Atty. Arturo Agudo, was called. At that instant Judge Alovera stood up and said, "*All right, you just continue,*" and then went out of the chambers.<sup>[18]</sup> Judge Alovera would occasionally return to the chambers in the course of the proceedings, but he would just sit down and listen while Atty. Villaruz was conducting his direct examination of the witness and presenting documentary evidence.<sup>[19]</sup> The proceedings lasted up to 12:10 in the afternoon, with Judge Alovera making only two rulings in the course thereof, including the one he made at the end when he ordered the plaintiffs to file their written offer of evidence on January 20, 1994.<sup>[20]</sup>

From this point on, complainant would establish how the January 30, 1995 decision of Judge Alovera in Civil Case No. V-6186 came about.

Prior to his retirement from the judiciary on January 31, 1995, or on January 5, 1995, Judge Alovera designated his legal researcher, Mrs. Nenita Aluad, to be the OIC Branch Clerk of Court.<sup>[21]</sup> As part of her functions as such OIC, all decisions, orders and resolutions of Br. 17 would first be received by her from the judge, and would stamp them "RECEIVED" and put thereon the date of receipt as well as her initial or signature.<sup>[22]</sup> This is in accordance with Sec. 1, Rule 36 of the Rules of Court.<sup>[23]</sup>

Sometime in February of 1995, Mrs. Teresita V. Bauzon, court stenographer of Br. 17 since 1993, was asked to type the draft decision in Civil Case No. V-6186 in Judge Alovera's house. When she inquired if he can still do it, Judge Alovera told her that he had one (1) year more to decide cases. With this assurance, she typed the draft decision on a single bond paper without a duplicate as Judge Alovera was dictating it.<sup>[24]</sup>

On August 1, 1995 at about 9:30 in the morning, retired Judge Alovera came to Br. 17, with a man and a woman, later identified as the plaintiffs in Civil Case No. V-6186, behind him. While he was approaching Nenita Aluad, he uttered to the latter, "*Receive this, receive this,*" referring to the questioned January 30, 1995 decision, which he was holding. As he spread the decision on her table, he continued, "*Because I will defend you even up to the Plaza Miranda. And give copies to these two,*" pointing to the plaintiffs who were at his back.<sup>[25]</sup> Almost instantaneously, Mrs. Aluad replied, "*I would not receive it because it is already August 1, 1995,*" and she did not argue with him anymore so as not to embarrass him for being her former superior.<sup>[26]</sup> She then went out of the office while retired Judge Alovera, as well as the two plaintiffs were still inside.<sup>[27]</sup> At about the same time, Mrs. Concepcion Alcazar, another employee of Br. 17 and the clerk-in-charge of civil cases and special proceedings therein, saw Judge Alovera inside the office of Br. 17 while trying to have her co-employees receive the questioned decision. Nobody, however, received the same because it was already seven (7) months after his retirement.<sup>[28]</sup> A little later, she found the questioned decision, together with the formal offer of exhibits of January 20, 1995 and the order of January 25, 1995, on the top of her table. Although she noticed that these records were not stamped "RECEIVED" as a matter of procedure, she went on to attach the said records to the *expediente* of Civil Case No. V-6186.<sup>[29]</sup> She even gave a copy of the questioned decision to one of the plaintiffs, Ireneo Borres, and to Atty. Villaruz, which was received for him by Ireneo Borres.<sup>[30]</sup> After keeping the *expediente*, she then entered the questioned decision in her logbook.<sup>[31]</sup>

The Borres heirs succeeded in having the questioned decision executed when, on January 31, 1996, the lessee of the property, which is the subject matter of Civil Case No. V-6186, surrendered possession of the said property in favor of the Borres heirs,<sup>[32]</sup> Said transfer of possession