

EN BANC

[A.M. No. P-20-4067 [Formerly OCA I.P.I. No. 19-4968-P], November 03, 2020]

JUDGE LILIBETH O. LADAGA, COMPLAINANT, VS. ATTY. ARNAN AMOR P. SALILIN, CLERK OF COURT, AND ELGIE G. BONGOSIA, UTILITY WORKER I, BOTH OF BRANCH 28, REGIONAL TRIAL COURT (RTC), SURIGAO DEL SUR, RESPONDENTS.

DECISION

PER CURIAM:

The instant administrative case stemmed from a 30 August 2019 Letter^[1] (Letter) from Judge Lilibeth Ladaga (Judge Ladaga), Presiding Judge, Branch 28, Regional Trial Court (RTC), Lianga, Surigao del Sur to the Office of the Court Administrator (OCA) charging Atty. Arnan Amor P. Salilin (Atty. Salilin), Clerk of Court, and Elgie G. Bongosia (Bongosia), Utility Worker I, both from Branch 28, RTC, Lianga, Surigao del Sur with grave misconduct.

Factual Antecedents

On 16 July 2019, during the hearing of Criminal Case Nos. 18-3322, 18-3323 and 18-3324, entitled *People v. Quilaton et al.*, before Judge Ladaga's sala, it was discovered that two (2) sachets of "shabu" the subject of the prosecution witness' testimony that day, were missing from the evidence container.^[2] Two weeks later, or on 30 July 2019, at the hearing of Criminal Case No. 2216 to 18-3320, entitled, *People v. Dormitorio, et al.*,^[3] the court discovered another sachet of "shabu" had gone missing.

Judge Ladaga requested the National Bureau of Investigation (NBI) District Office in Prosperidad, Agusan del Sur to conduct an investigation on the missing drug evidence. She also requested the Philippine National Police (PNP) Provincial Laboratory to conduct drug testing on all court personnel, including herself and her spouse, the security guards, and the staff assigned to the court on a job order status.^[4]

All the court personnel tested negative for drugs,^[5] except for Bongosia,^[6] which did not preclude the possibility that he used illegal drugs at least four (4) days prior to testing. On 02 August 2019, the NBI agents interviewed all the court personnel of Branch 28, RTC, Lianga, Surigao del Sur. During his interview, Bongosia confessed that he took the sachets of shabu from the evidence vault.^[7]

Judge Ladaga called the court personnel to a meeting after the NBI agents left, with court stenographer Mercedita Tolentino recording the proceedings.^[8] Bongosia repeated his confession. He admitted that he took the sachets of drugs out of the

evidence vault one Saturday in June 2019. He claimed an unknown person threatened to inflict dreadful consequences upon him if he will not destroy the records and evidence in the drug cases pending in Branch 28.^[9] When Atty. Salilin started looking for the missing drug evidence, Bongasia admitted having kept some and surrendered the same in a crumpled bond paper. Upon instruction of Judge Ladaga, the sachets were placed inside a zip lock pouch, sealed and signed by Atty. Salilin.^[10] Afterwards, Bongasia committed to reduce his confession to writing.^[11]

In his affidavit, Bongasia recounted that sometime in mid-June 2019, while he was out for some office errands, someone placed an arm on his shoulder, and told him, "Do not look back, and just keep on walking. We have a request to you. Burn the records of the drug cases and the evidence. So that nothing will happen to all of you. Don't tell anyone. Don't look back, just proceed and keep on walking."^[12] He was confused by the conversation, but continued walking. He claimed that he was overcome with anxiety and confusion by what happened.^[13]

One Saturday in June 2019, Bongasia went to the court and told the guard on duty to buy food for their lunch. He immediately went to Atty. Salilin's table, opened his drawer, took the keys to the vault, and opened the same.^[14] He took the evidence box from inside the vault and randomly pulled out sachets of drugs which he placed inside different cellophanes. He returned the evidence box, closed the vault, and placed the key back to Atty. Salilin's drawer.

Bongasia further declared that he took his lunch from the guard and went home, in a rented room above Atty. Salilin's house, and kept the drugs inside his cabinet. During nightfall, he went to the vacant area behind Atty. Salilin's house and burned the drugs with dried leaves and cellophane. He poured diesel on the drugs to hide the smell. He also admitted taking two (2) sachets and using one of them.^[15] Finally, he claimed that he acted alone and was ready to face the consequences of his transgression.^[16]

Meanwhile, the sachets recovered from Bongasia were confirmed to contain methamphetamine hydrochloride.^[17] Thereafter, Judge Ladaga issued a memorandum prohibiting Bongasia from entering the premises^[18] and directing Atty. Salilin to explain how Bongasia had access to the drug evidence vault.^[19]

Atty. Salilin submitted his explanation, which and emphasized that for more than seven (7) years of service, he has never encountered problems regarding missing drug evidence, lost court property, or even misappropriate a single centavo.^[20] He admitted Bongasia had been living in the second floor of his rented house for a year. He acknowledged the possibility that Bongasia might have taken the keys of the evidence vault either from his bag^[21] or from his office drawer. He surmised that the vault's locking mechanism might have failed to engage, or Bongasia might have tinkered with the same.^[22] As to the combination lock of the evidence vault, Atty. Salilin claimed that nobody knew how to change the number combination, since it was merely inherited from the former clerk of court. He asserted that he was also a victim of Bongasia's acts, since the latter took the key from his drawer, in violation of his right to privacy. He denied being negligent because he never left his drawer open.^[23]

After an inventory, it was found that Bongosia took a total of thirtysix (36) sachets of drugs from sixteen (16) cases, viz: 1) twenty-two (22) sachets from nine (9) active/pending cases^[24]; 2) nine (9) sachets from four (4) cases Subject of plea bargaining^[25]; 3) three (3) sachets from two (2) decided cases^[26]; and 4) two (2) sachets from one (1) case subject of a demurrer, with a total net weight of 16.0766 grams.^[27]

In a 09 September 2019 letter^[28], Atty. Salilin reported the theft of drug exhibits from the court's evidence vault, and the subsequent filing of criminal action for qualified theft against Bongosia. Atty. Salilin alleged that Judge Ladaga called a meeting of all court personnel where she announced that she had forwarded the investigation report to the Supreme Court, and that criminal and administrative cases were filed against him and Bongosia.^[29] He claimed that during the meeting and in the presence of all the staff, Judge Ladaga asked him to resign from his post to avoid the pain of being terminated. Moreover, the court could look for an OIC-Clerk of Court in the meantime as preventive suspension for ninety (90) days was expected claiming that Judge Ladaga already prejudged him. Atty. Salilin requested to be transferred to another station, particularly to the RTC of Dapa, Surigao del Norte.^[30]

In a 10 September 2019 Supplemental Letter Complaint^[31], Judge Ladaga informed the Court that the NBI had already charged Atty. Salilin and Bongosia with violation of Section 27^[32] of Republic Act (RA) No. 9165 before the Office of the Provincial Prosecutor of Surigao del Sur City. She also submitted the 05 September 2019 NBI Investigation Report^[33] (NBI Report) and claimed that Atty. Salilin filed a case for qualified theft against Bongosia.

The NBI recommended that Atty. Salilin and Bongosia be charged for violation of Sec. 27 of RA 9165.^[34] While Bongosia admitted the theft of the evidence, the NBI found his story bore holes and lapses which defied logic.^[35] First, the NBI found it suspicious that the missing sachets were taken from pending cases, while some from already terminated cases. Second, he failed to confide the threats of the unknown person to Judge Ladaga and Atty. Salilin.^[36] On the other hand, the NBI also found Atty. Salilin's conduct highly unusual in that he failed to notice and report the substantial loss of evidence - a total of thirty-six (36) sachets - in a single occasion.^[37] He did not take any action, and instead, waited for Judge Ladaga to initiate an investigation. The NBI found it suspicious that Atty. Salilin was nonchalant and unperturbed, instead of being the first person to charge Bongosia.^[38]

Report and Recommendation of the OCA

In its 08 June 2020 Report and Recommendation^[39], the OCA submitted the following:

The instant administrative complaint against Atty. Salilin and Bongosia be re-docketed as a regular administrative matter;

Bongosia be held liable for grave misconduct and be dismissed from

service, with forfeiture of his retirement and other benefits, except accrued leave credits, and be perpetually disqualified from re-employment in the government service;

Atty. Salilin be found guilty of simple neglect of duty and suspended for three (3) months without pay, with a stern warning that a repetition of the same will be dealt more severely; and

The complaint against Atty. Salilin for grave misconduct be dismissed for insufficiency of evidence.^[40]

The OCA agreed with Judge Ladaga that Bongosia was guilty of grave misconduct when he took the drug evidence from the vault and used one of the sachets.^[41] However, the OCA disagreed that Atty. Salilin is liable for grave misconduct, finding no evidence that he actually conspired with Bongosia in taking the drug evidence from the vault.^[42] Instead, it recommended holding Atty. Salilin liable for simple neglect of duty, particularly in the safekeeping of drug evidence.^[43]

Issue

The sole issue for the Court's resolution is whether Atty. Salilin and Bongosia are administratively liable for the loss of drug evidence in the court's custody.

Ruling of the Court

The Court adopts the OCA's findings but modifies the designation of the offense and the penalty to be imposed in accordance with recent jurisprudence.

The clerk of court is mandated with safekeeping all submitted pieces of evidence. Section E (2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court reads:

All exhibits used as evidence and turned over to the court and before the easels involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court.

Meanwhile, Section 7 of Rule 136 of the Rules of Court also provides:

SEC. 7. Safekeeping of property. - The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns.^[44] They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they generally are also the treasurer, accountant, guard and physical plant manager of the trial courts.^[45]

Given the fundamental role of evidence in court proceedings, the clerk of court's duties is crucial, having control and management of all court records, exhibits,

documents, properties, and supplies.^[46] As record and evidence keeper, it is respondent's duty to conduct periodic inventory of dockets, records, and exhibits, as well as to ensure that the records and exhibits of each case are accounted for.^[47] Being the custodian, the clerk of court is liable for any loss, shortage, destruction, or impairment to these items.^[48]

In this case, it is apparent that Atty. Salilin did not properly manage the evidence under his custody. That the loss of the drug sachets was discovered during trial, while the witness was about to identify the same, highlighted Atty. Salilin's failure to conduct the necessary inventory. It also brought undue embarrassment to the court. Had he been performing his duties faithfully he would have definitely noticed the loss of such a considerable number of evidence.

His assertion that he was also a victim of Bongosia's thievery, is a lousy attempt to downplay his negligence. Atty. Salilin did not have a system for guarding the evidence vault's key, and was unsure whether he left the keys in his drawer or his bag at the time of the theft. If he truly believed that the lock of the evidence vault is old and faulty, or that there were difficulties in maintaining it, he should have requested for a new one, or at least raised the concern to Judge Ladaga.^[49] A simple exercise of diligence would have prompted him to inform the judge of the necessary repair and device reliable safety measures to ensure the safety of the contents of the vault.^[50]

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records, and exhibits.^[51] Court evidence cannot and should not be treated like any ordinary court supply, as they are indispensable to the court's adjudicative functions. Atty. Salilin should have been more circumspect in securing the contents of the evidence vault. This, considering that the evidence vault contained vital pieces of evidence necessary in determining the guilt of the accused with pending cases before their Court.

Atty. Salilin's negligence notwithstanding, the Court agrees with the OCA that there is no proof that he conspired with Bongosia to steal the drugs from the vault. There is nothing that directly shows he consented to, or even knew that, Bongosia took the drug sachets from the vault. The finding of conspiracy entails that the alleged conspirator performed at least an overt act that showed his concurrence in the criminal design. His mere presence in the crime scene, as well as the showing of his inaction to prevent the commission of the crime, will not make him a co-conspirator because such is not of the nature of overt acts essential to incurring criminal liability under the umbrella of a conspiracy.^[52]

Nonetheless, this Court does not share the OCA's view that Atty. Salilin should be held liable for simple neglect of duty. It is true that in the past, loss of exhibits resulted to the clerk of court's liability for simple neglect of duty and a penalty of suspension and/or fine.

In *Office of the Court Administrator v. Ramirez*,^[53] the Court found the respondent clerk of court liable for simple neglect of duty and suspended one (1) month and one (1) day for the loss of various court exhibits consisting of firearms and