743 Phil. 622

EN BANC

[A.M. No. SB-14-21-J [Formerly A.M. No. 13-10-06-SB], September 23, 2014]

RE: ALLEGATIONS MADE UNDER OATH AT THE SENATE BLUE RIBBON COMMITTEE HEARING HELD ON SEPTEMBER 26, 2013 AGAINST ASSOCIATE JUSTICE GREGORY S. ONG, SANDIGANBAYAN

D E C I S I O N

PER CURIAM:

The character of every act depends upon the circumstances in which it is done.

- Justice Oliver Wendell Holmes

This administrative complaint was filed by the Court *En Banc* after investigation into certain allegations that surfaced during the Senate Blue Ribbon Committee Hearing indicated *prima facie* violations of the Code of Judicial Conduct by an Associate Justice of the Sandiganbayan. The investigation was conducted *motu proprio* pursuant to the Court's power of administrative supervision over members of the Judiciary.[1]

Factual Antecedents

In the middle of 2013, the local media ran an exposé involving billions of government funds channeled through bogus foundations. Dubbed as the "pork barrel scam," as the money was sourced from the Priority Development Assistance Fund allotted to members of the House of Representatives and Senate, the controversy spawned massive protest actions all over the country. In the course of the investigation conducted by the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee), the names of certain government officials and other individuals were mentioned by "whistle-blowers" who are former employees of the alleged mastermind, Janet Lim-Napoles (Mrs. Napoles), wife of an ex-military officer. These personalities identified by the whistle-blowers allegedly transacted with or attended Mrs. Napoles' parties and events, among whom is incumbent Sandiganbayan Associate Justice Gregory S. Ong, herein respondent.

Benhur Luy (Luy), a cousin of Mrs. Napoles who had worked for several years with the Napoleses, filed illegal detention charges against Mrs. Napoles who accused him of double-dealing. When Luy went public with his story about Mrs. Napoles' anomalous transactions and before the warrant of arrest was issued by the court,

she reportedly tried to reach out to the other whistle-blowers for them not to testify against her but instead point to Luy as the one receiving and distributing the money.

Marina Sula (Sula) executed a Sworn Statement[2] before the National Bureau of Investigation (NBI) on August 29, 2013, part of which reads:

> 32. In the sixteen (16) years that I worked with Ms. Napoles, I witnessed several personalities visit our offices and join us as our special guests during our parties and other special occasions.
>
> 33. These personalities who would either visit our office or join our events and affairs are: Senator Franklin Drilon, Senator Jinggoy Estrada and family, Senator Bong Revilla, Lani Mercado-Revilla, Bryan Revilla, Secretary Rene Villa, Congressman Pichay and Wife, Congressman Plaza, Congressman Ducut, DAR Director Theresita Panlilio, Catherine Mae Canlas Santos, Pauline Labayen, Jen Corpuz (Staff of Senator Sotto), Mayor Rene Maglanque, Atty. Dequina, **Justice Gregory Ong**, x x x.
>
> 34. Before the warrant of arrest was issued against Ms. Napoles, she told us that that case could take four to five years to clear. She said, "*Antayin niyo munang ma-clear pangalan ko para makakilos ako at matulungan ko kayo"*. **Sinabi niya na meron na siyang kausap sa Ombudsman at sa Sandiganbayan.**
>
> 35. On 28 August 2013 while me and my companions were at the NBI, Janet Lim Napoles called me. She was crying and ask[i]ng me not to turn my back on her, that we should stay together. She said "kahit maubos lahat ng pera ko, susuportahan ko kayo. **Hintay[i]n nyo kasi lalabas na ang TRO ko."**
>
> x x x x
>
> 38. Attorney Tan instructed us to implicate Benhur in case we were asked by the NBI. He said "wala naman ipinakita sa inyong masama si Madam (Janet Lim Napoles). Siguro wala naman kayong sama ng loob kay madam, kaya nga idiin ninyo si Benhur na siya ang nag-utos at saka sa kanya ninyo ibinibigay ang pera."[3] (Emphasis supplied.)

The following day, the social news network Rappler published an article by Aries Rufo entitled "*Exclusive: Napoles Parties with Anti-Graft Court Justice"* showing a photograph of Senator Jinggoy Estrada (Senator Estrada), one of the main public figures involved in the pork barrel scam, together with Mrs. Napoles and respondent. The reporter had interviewed respondent who quickly denied knowing Mrs. Napoles and recalled that the photograph was probably taken in one of the parties frequently hosted by Senator Estrada who is his longtime friend. Respondent also supposedly admitted that given the ongoing pork barrel controversy, the picture gains a different context; nevertheless, he insisted that he has untainted service in the judiciary, and further denied he was the one advising Mrs. Napoles on legal strategies in connection with the Kevlar helmet cases where she was acquitted by a Division of the Sandiganbayan of which respondent is the

Chairman and the then Acting Presiding Justice.[4]

On September 12, 2013, Sula executed a *"Karagdagang Sinumpaang Salaysay"*[5] wherein she gave details regarding those persons named in her sworn statement, alleged to have visited their office or attended their events, thus:

> 63) T: Ayon sa paragraph Nos. 32 at 33 ng iyong sinumpaang salaysay na may petsang 29 Agosto 2013, nabanggit mo ang mga personalidad na nakikita mong bumibisita sa inyong opisina o di kaya naman sa tuwing may party o special occacions si JANET NAPOLES ay may mga special guests kayo na kinabibilangan ng mga malalaking pulitiko at ang iba naman ay may mga katungkulan sa gobyerno. Maari mo bang ilahad ang mga pangyayari sa mga bawat pagkakataon na nakita mo sila sa iyong pagkaka-alala?
>
> S : Opo, iisa-isahin ko po ang mga pangyayari sa mga pagkakataon na nakita ko po ang mga taong nabanggit ko:
>
> x x x x
>
> w) Justice GREGORY ONG - **Isang beses ko po siyang nakitang nagpunta sa office** sa 2501 Discovery Centre, Ortigas at nakita ko po silang **magkausap ni Madam JANET NAPOLES sa conference room.**
>
> x x x x[6]

In her testimony before the Senate Blue Ribbon Committee on September 26, 2013, Sula was asked to confirm her statement regarding Justice Ong, thus:

> THE CHAIRMAN. *Thank you, Senator Grace.*
> *Isang tanong lang kay* Ms. Sula.
>
> *Sinabi niyo kanina may tinawagan si Ms. Napoles at sinabi niya, "Malapit na lumabas yung TRO galing sa korte."* ***May kilala pa ba si Janet Lim Napoles sa huwes sa korte sa Sandiganbayan****?*
>
> MS. SULA. *Hindi ko po alam.*
>
> THE CHAIRMAN. Your attention is called sa page –
>
> MS. SULA. *Sandiganbayan po, sorry. Mayroon po siyang binanggit na ano po –*
>
> THE CHAIRMAN. *Nandito sa page 20.*
>
> MS. SULA. ***Si Mr. Ong, po, Justice Ong po.***
>
> THE CHAIRMAN. *Gregory Ong.*

MS. SULA. *Opo.*

THE CHAIRMAN. *Sa Sandiganbayan?*

MS. SULA. *Opo.*

x x x [7] (Emphasis supplied.)

In a letter dated September 26, 2013 addressed to Chief Justice Maria Lourdes P. A. Sereno, respondent meticulously explained the controversial photograph which raised questions on his integrity as a magistrate, particularly in connection with the decision rendered by the Sandiganbayan's Fourth Division in the Kevlar helmet cases, which convicted some of the accused but acquitted Mrs. Napoles.

Respondent surmised that the photograph was taken during the birthday of Senator Estrada in February, either in the year 2012 or 2013, but definitely not in 2010 or earlier. He explained that he could vaguely remember the circumstances but it would have been rude for him to prevent any guest from posing with him and Senator Estrada during the party. On the nature of his association with Mrs. Napoles, respondent asserted:

> (4) I can categorically state, on the other hand, that **I have never attended any party or social event hosted by Mrs. Napoles or her family, either before she had a case with our court, or while she already had a pending case with our court, or at any time afterwards.** I have never, to use the term of Mr. Rufo in his article, "partied" with the Napoleses. (Emphasis supplied.)

As to the Kevlar helmet cases, respondent said it was impossible for him to have been advising Mrs. Napoles, as claimed by Mr. Rufo, as even the article itself noted that Mrs. Napoles' own brother, Reynald L. Lim, (a.k.a. Reynaldo L. Francisco), a co-accused in the case, was convicted by the Sandiganbayan. He stressed that these cases were decided on the merits by the Sandiganbayan, acting as a collegial body and he was not even the *ponente* of the decision.

Respondent thus submitted himself to the discretion of the Chief Justice such that even without being required to submit an explanation, he voluntarily did so "to defend [his] reputation as a judge and protect the Sandiganbayan as an institution from unfair and malicious innuendos."

On October 7, 2013, Chief Justice Sereno wrote the Members of this Court, citing the testimonies of Luy and Sula before the Senate Blue Ribbon Committee "[t]hat the malversation case involving Mrs. Janet Lim-Napoles, Major Jaime G. Napoles, Jenny Lim Napoles, Reynaldo L. Francisco and other perpetrators was 'fixed' (*inayos*) through the intervention of Justice Gregory S. Ong of the Sandiganbayan", to wit:

> SEN. ANGARA. *Sa inyo, hindi niyo alam kung inayos iyong kaso na iyon? Kasi napakaraming koneksiyon, 'di ba?*
> *xxxx Sige, huwag kang matakot, Benhur.*

MR. LUY. *Alam ko, inayos ni Ms. Napoles iyon dahil may connect nga siya sa Sandiganbayan*

SEN. ANGARA. *Okay.*

xxxx

THE CHAIRMAN. xxx *Sinabi niyo kanina na may tinawagan si Ms. Napoles at sinabi niya "Malapit na lumabas yung TRO galing sa korte." May kilala pa ba si Janet Lim Napoles sa huwes sa korte sa Sandiganbayan?*

xxxx

MS. SULA. *Si Mr. Ong po, Justice Ong po.*

THE CHAIRMAN. *Gregory Ong.*

MS. SULA. *Opo.*

THE CHAIRMAN. *Sa Sandiganbayan?*

MS. SULA. *Opo.*

xxxx[8]

Chief Justice Sereno then requested the Court *En Banc* to conduct an investigation *motu proprio* under this Court's power of administrative supervision over members of the judiciary and members of the legal profession (referring to notaries public who were alleged to have purposely left their specimen signatures, dry seals and notarial books with Mrs. Napoles to facilitate the incorporation of non-governmental organizations [NGOs] involved in the scam).[9]

Under our Resolution dated October 17, 2013, the Court *En Banc* required respondent to submit his comment and directed the NBI to furnish the Court with certified copies of the affidavit of Luy.

On November 21, 2013, the Court received respondent's Comment.[10] Respondent categorically denied any irregularity in the Kevlar helmet cases and explained the visit he had made to Mrs. Napoles as testified by Sula.

On Sula's statement, respondent points out that Sula never really had personal knowledge whether respondent is indeed the alleged "contact" of Mrs. Napoles at the Sandiganbayan; what she supposedly "knows" was what Mrs. Napoles merely told her. Hence, Sula's testimony on the matter is based purely on hearsay. Assuming that Mrs. Napoles actually made the statement, respondent believes it was given in the context of massive media coverage of the pork barrel scam exploding at the time. With the consciousness of a looming criminal prosecution before the Office of the Ombudsman and later before the Sandiganbayan, it was