

SECOND DIVISION

[A.M. No. P-09-2651, March 23, 2011]

EMMANUEL M. GIBAS, JR., COMPLAINANT, VS. MA. JESUSA E. GIBAS, COURT STENOGRAPHER I, MUNICIPAL TRIAL COURT, GUIGUINTO, BULACAN, AND FRANCONELLO S. LINTAO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 83, MALOLOS CITY, BULACAN, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is an administrative complaint for immorality filed by Emmanuel M. Gibas, Jr. (complainant) against his wife Ma. Jesusa E. Gibas (respondent Gibas) and Franconello S. Lintao (respondent Lintao). Respondent Gibas was then Court Stenographer I of the Municipal Trial Court (MTC) of Guiguinto, Bulacan but was detailed at Branch 80, Regional Trial Court (RTC) of Malolos City, Bulacan while respondent Lintao was Sheriff IV of Branch 83 of RTC, Malolos City.

The Facts

In his *Sinumpaang Salaysay*^[1] dated 17 September 2007, complainant accused his wife, respondent Gibas, of having an illicit relationship with respondent Lintao, who is also married to another person. Complainant alleged that he started having suspicions about his wife's indiscretions in January 2007 when, while working as a seaman abroad, his thrice weekly phone calls at 9:00 p.m. to 10:00 p.m. were often answered by their children because his wife was still not home. When complainant came back to the Philippines, he discovered that all their jewelries were missing. Complainant then searched through his wife's belongings and found a digital camera inside his wife's bag. Looking at the images in the camera, he was shocked to see images of a half-naked man, which he suspected was taken inside a motel room. Complainant later learned the identity of the half-naked man as respondent Lintao when he showed the image to his son and daughter, who told him respondent Lintao often went to their house and stayed at the master's bedroom with their mother (respondent Gibas). When questioned, complainant's son narrated that his mother (respondent Gibas) even scolded him when he peeped inside the room and saw respondent Lintao wrapped only in a white blanket. Their five-year old daughter even identified the man as "Franco" and told complainant that she saw both her mother and respondent Lintao naked and kissing inside the room. Complainant submitted several pictures of respondents Gibas and Lintao in very intimate and romantic poses to further support his allegations.

In her *Sinumpaang Kontra-Salaysay*^[2] dated 16 October 2007, respondent Gibas denied the accusations of complainant and dismissed most of complainant's

allegations as mere fabrications. Respondent Gibas attributed the missing jewelries to her failure to watch over their house and belongings because she was busy working in the court the whole day. She denied any knowledge of the half-naked images of respondent Lintao in her digital camera and explained that respondent Lintao once borrowed the camera during a family occasion. As regards the intimate pictures of her and respondent Lintao, respondent Gibas stated that those pictures were just random shots taken during their frequent outing with friends and were taken without any malice.

Complainant, in his *Sagot Sa Kontra Salaysay*,^[3] countered that the pictures of respondents Gibas and Lintao clearly indicate their intimate relationship. Complainant narrated that he was able to locate the motel where his wife and respondent Lintao regularly checked-in. Complainant alleged that when the security guard of the motel was shown pictures of respondents Gibas and Lintao, the security guard confirmed that respondents indeed frequented the motel.

Respondent Gibas filed a Motion to Dismiss^[4] dated 5 January 2009, asserting that since she had been dropped from the rolls effective 1 February 2007 and the complaint against her was filed only on 18 September 2007, the Court no longer had jurisdiction over her person. Records show that in a resolution of the Court dated 30 July 2007 in A.M. No. 07-6-286-RTC,^[5] respondent Gibas was dropped from the rolls effective 1 February 2007 for absence without official leave (AWOL). However, upon verification from the Office of the Administrative Services, the OCA discovered that on 30 October 2008, respondent Gibas was re-employed as Clerk III and assumed office on 5 November 2008 at the Regional Trial Court, Office of the Clerk of Court, Baguio City.^[6] Further investigation revealed that when respondent Gibas applied for the new position, she did not disclose in her personal data sheet that she had a pending administrative charge of immorality and that she was dropped from the rolls due to AWOL.

Respondent Lintao, on the other hand, has failed to file his comment despite being given several opportunities to comment on the complaint. In a resolution of the Court dated 23 June 2008 in A.M. No. 08-4-229, respondent Lintao was likewise dropped from the rolls effective 1 March 2007 for AWOL.^[7]

The Court, in a resolution^[8] dated 8 July 2009, re-docketed this administrative complaint^[9] as regular administrative matter A.M. No. P-09-2651. In a resolution^[10] dated 30 September 2009, the Court resolved to refer the administrative complaint against respondents to the Executive Judge of the Regional Trial Court of Malolos City, Bulacan for investigation, report and recommendation.

The Report of the Investigating Judge

In his Report dated 16 March 2010, the Investigating Judge found respondents Gibas and Lintao guilty of immorality, thus:

EVIDENCE

Complainant affirmed all the material allegations in his filed sworn

statements and on clarificatory questioning stressed that prior to his arrival from the United States as a seaman, he noted some behavioral change from his wife Ma. Jesusa Gibas on calling her everyday at home, [s]he cannot be contacted with reports reaching him that she was seen in unholy hours elsewhere. For three or four days after coming home unannounced on August 28, 2007, his wife respondent was nowhere. Their children were found surviving from "food borrowed from the store" and unattended to. Texting thereafter his wife, the latter responded. Both met in a fast food chain in Malolos City. Psyching his wife respondent, who by then acknowledged his suspicion, and on her taking a nap upon coming home, complainant managed to secure pictures of his wife and respondent sheriff in uncompromising situations, found in their digital camera and inside the shoulder bag of his wife. Such relationship was likewise verified [by] their children. In addition he was able to gather the police report on the accident involving his wife respondent and respondent Lintao on board the vehicle at an untimely hour evidenced by pictures taken of the duo alleged to be drunk then sleeping in the car. Complainant and children are now living separate from respondent Gibas.

Against these imputations, respondent Ma. Jesusa Gibas only submitted and marked her sworn statements and reiterated her plea to resolve the motion to dismiss the administrative charge filed against her and its supplemental motion.

FINDINGS AND RECOMMENDATION

Testimonial and documentary evidence support the complaint of Emmanuel Gibas, Jr. against his wife respondent Ma. Jesusa Gibas and respondent Sheriff IV Franconello Lintao. Forming integral part of the letter complaint of Emmanuel M. Gibas, Jr. are pictures which eloquently captured the intimacy between the two respondents. That the pictures are but a result of camaraderie of their "barkada" is a lame excuse to relieve respondents from any sanction.

Denial was the pronounced defense of respondent Ma. Jesusa Gibas. Pitted against the affirmative allegations of the complainant, the same has to be rightfully dismissed. Between positive allegations and negative allegations, the former control and are more credible in standing.

The further raised argument that the disciplining authority has lost jurisdiction over respondent Ma. Jesusa Gibas is already a resolved issue.

As regards respondent Franconello Lintao, it has been said that his refusal to submit his comments constitutes a clear and willful disrespect to the lawful orders of the office of the Court Administrator, a conduct which cannot be brushed aside. His deafening silence, from evidentiary point is an admission of guilt.

Given the foregoing, this Office is persuaded with the merits of the complaint and respondents must be meted the additional accessory penalties involved in the dismissal from the service x x x.^[11]