

## SECOND DIVISION

[ A.C. No. 3046, October 26, 1998 ]

**REGALADO DAROY, COMPLAINANT, VS. ATTY. ESTEBAN ABECIA,  
RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This refers to the complaint for malpractice filed by Regalado Daroy (now deceased) against Esteban Abecia, a member of the Bar. Complainant Daroy accused respondent Abecia of having forged his signature in a deed of absolute sale by means of which the latter was able to transfer a parcel of land in Opol, Misamis Oriental, first to Jose Gangay and eventually to his (respondent's) wife Nena Abecia.

The facts of the instant case are as follows:

Respondent Abecia was counsel of complainant Daroy in a case for forcible entry before the Municipal Trial Court of Opol, Misamis Oriental.<sup>[1]</sup> Judgment was rendered in favor of complainant as plaintiff in the ejectment case, ordering the defendants to pay damages, attorney's fees, and the costs of the suit. To satisfy the judgment, the sheriff sold at public auction on March 25, 1971 a parcel of land belonging to one of the defendants to complainant Daroy as highest bidder for P1,250.00. Upon failure of the defendants to redeem the land, its ownership was consolidated in complainant Daroy.

Complainant Daroy claimed that respondent Abecia forged his signature in a deed of absolute sale, dated March 31, 1971, transferring the subject parcel of land to Jose Gangay purportedly for the sum of P1,250.00 and that in a fictitious deed of absolute sale, dated April 17, 1971, it was made to appear that Gangay in turn conveyed the land to Nena Abecia, wife of respondent Abecia, for the sum of P1,350.00.<sup>[2]</sup> Complainant alleged that he entrusted the title to the land (TCT No. T-315) to Abecia as his counsel and allowed him to take possession of the land upon the latter's request. By means of the forged deed of sale, Abecia was able to obtain new transfer certificates of title, first in the name of Gangay and then in that of Mrs. Abecia, from the Registry of Deeds of Misamis Oriental.<sup>[3]</sup> Daroy claimed he discovered the fraud only in 1984.

Daroy submitted in evidence a report of the National Bureau of Investigation, which had examined the deed of sale in favor of Jose Gangay, showing that Daroy's signature in the deed of sale had been written by a different hand. In addition, Daroy presented the affidavit, executed on August 10, 1988, of Anita Gangay, wife of Jose Gangay, in which she retracted an earlier affidavit executed on June 5, 1985. In the first affidavit, she stated that she had bought the land in question from Regalado Daroy and then sold it to her sister Nena Abecia, wife of respondent Esteban. Now, in her present affidavit, it is stated that she did not buy the land from

Daroy nor later sell it to Nena Abecia and that she really did not know anything about the controversy between Regalado Daroy and Esteban Abecia, both of whom are her brothers-in-law. (It appears that Mrs. Conchita Daroy, Mrs. Anita Gangay, and Mrs. Nena Abecia are sisters, although Conchita Daroy and Regalado Daroy are not married but lived together in a common-law relationship.)

A complaint for falsification of public document was also filed against respondent Abecia in the Office of the City Prosecutor of Cagayan de Oro which, however, dismissed the same.<sup>[4]</sup> On appeal, then Undersecretary of Justice Silvestre H. Bello III reversed on May 6, 1988 the findings of the City Prosecutor of Cagayan de Oro and consequently ordered the filing of the corresponding information in court.<sup>[5]</sup> Accordingly, City Prosecutor Rodolfo R. Waga filed an information for falsification of public document, dated June 30, 1988, with the Regional Trial Court of Misamis Oriental.<sup>[6]</sup>

Respondent Abecia was unable to attend the hearings. He asked for their transfer to Cagayan de Oro on the ground that he did not have the means to travel, but his request was apparently denied sub silencio as the Commission continued the hearings in Pasig, Metro Manila. As a result only his counsel was present at the hearings.<sup>[7]</sup>

As respondent reiterated his request for the transfer of venue, it was agreed at the hearing of January 30, 1989 that respondent's answer, dated August 3, 1987, and the affidavits of his witnesses as well as his own would be considered as their direct testimonies.<sup>[8]</sup>

In his answer, respondent Esteban Abecia maintained that on March 31, 1971, Regalado Daroy sold the land in question to Jose Gangay, and the latter in turn sold the land to Nena Abecia on April 17, 1971. He cited the sheriff's return, dated August 6, 1973, in which it was stated that on August 4, 1993 "Regalado Daroy and his assignee Nena Abecia were . . . placed in actual possession of the parcel of land subject matter of the Deed of Conveyance and Possession."<sup>[9]</sup> He also referred to the resolution of the Assistant Provincial Fiscal of Misamis Oriental, who dismissed the complaint for grave coercion and malicious mischief filed by Gertrudes De Bajuyo, one of the defendants in the ejectment case, against Regalado Daroy and Nena Abecia for the demolition of her house, precisely on the basis of "the right of Mrs. Nena Abecia . . . as assignee to do whatever she wants to do of the things she owns."<sup>[10]</sup>

On July 15, 1993, Commissioner Plaridel C. Jose rendered a report finding respondent Abecia guilty of malpractice and recommending his disbarment. In his report, Commissioner Jose stated:<sup>[11]</sup>

. . . In the course of his law practice, the respondent handled several cases in behalf of the complainant Regalado Daroy, among which is Civil Case No. 3288, wherein a parcel of land located at Opol, Misamis Oriental covered by TCT No. T-15924 (TCT No. T-315) was the subject of litigation. In the course of handling the same, the complainant entrusted to the respondent the pertinent documents necessary in the said case which included his said TCT No. T-15924.

In the year 1971, without the knowledge of the complainant, a document entitled Deed of Sale dated March 31, 1971 was executed and notarized by Notary Public Erasmo G. Damasing as Doc. No. 68, Page No. 16, Book No. VIII, Series of 1971, which appears to have been signed by complainant Regalado Daroy, thereby conveying the said property in favor of a certain Jose Gangay, married to Anita Basmayor, by virtue of which TCT No. T-15925 was issued in the name of Jose Gangay.

Two weeks thereafter, under date of April 17, 1971, the said Jose Gangay executed a Deed of Sale of the same property in favor of Mrs. Nena Abecia, the wife of the respondent, by virtue of which TCT No. T-15926 was issued in the name of Nena Abecia, married to Atty. Esteban Abecia, the respondent.

Sometime in the year 1984, the complainant discovered that his said property was already in the name of Mrs. Nena Abecia and Atty. Esteban Abecia.

. . . .

The foregoing evidence sufficiently proved respondent's acts complained of in the present case . . . . The significant fact is that the herein respondent was instrumental and responsible for falsifying the signature of his client, complainant Daroy, in the deed of conveyance in favor of Jose Gangay, for which he is at present criminally charged in Criminal Case No. 88-443 before the Regional Trial Court of Misamis Oriental.

In an unclear manner, respondent tried to justify his act by alleging that the transfer of his client's property to his wife was proper because he allegedly was not paid for his professional services. Such allegation, even if true, would not exculpate him from liability. A lawyer who executed with his client a deed transferring ownership over a parcel of land involved in a pending litigation as his attorney's fees violates the rule prohibiting the purchase of property in litigation by a lawyer from his client.

. . . What is saddening is the fact that he is presently an incumbent labor arbiter of the National Labor Relations Commission with the delicate responsibility of administering justice to the parties before him. . . . The Commission has no alternative but to recommend his disbarment. It is likewise recommended that the National Labor Relations Commission be furnished with these findings for its guidance and appropriate action.

The Board of Governors of the Integrated Bar of the Philippines in Resolution No. XI-94-072, dated March 26 1994,<sup>[12]</sup> approved the report but reduced the penalty to indefinite suspension.

Respondent Abecia filed a Motion for Reconsideration and/or Appeal. Among other things, he contends that:<sup>[13]</sup>

. . . .

1. The Commission on Bar Discipline erred when it held that complainant had no knowledge of the execution of the Deed of Absolute Sale on March 31, 1971 before Notary Public Erasmo G. Damasing.

Complainant very well knew of the execution of the deed of sale as shown in the Sheriff's Return of Service (Respondent's Annex "9") dated August 6, 1973, where he declared that he was accompanied by the complainant and his assignee, Nena Abecia, in implementing the Deed of Conveyance and Possession on August 4, 1973. The Deputy Sheriff even went as far as declaring that the land was already in the name of complainant's assignee. Paragraph 2 of the said Sheriff's Return of Service is herein quoted verbatim:

"2. The undersigned then proceeded to the parcel of land which is the subject matter of the Deed of Conveyance and Possession together with purchaser Regalado Daroy, his assignee Nena Abecia, Atty. Esteban Abecia, Ex-LTC Registrar Clemente Quiblat, P.M. Salazar, and the Police Sgt. of Opol, Misamis Oriental, Felix Abejuela. Regalado Daroy and his assignee, Nena Abecia, were then formally placed in actual and physical possession of the parcel of land subject matter of the Deed of Conveyance and Possession. Regalado Daroy and his assignee, Nena Abecia, then asserted their ownership of the parcel of land by making use of the improvements found on the land such as the young coconuts and bananas. As a matter of fact the parcel of land is already in the name of Nena Abecia per Transfer Certificate of Title No. T-15926 entered in the Register of Deeds of Cagayan de Oro City on June 18, 1973 at 1:00 P.M." (Underscoring Ours).

Likewise, in Office File No. 419-74 of the Office of the Provincial Fiscal (Respondent's Annex "10") dated April 18, 1974, wherein complainant Regalado Daroy was the accused, then 4th Asst. Fiscal Alejo G. Rola referred to Nena Abecia as the owner of the subject property by virtue of her being the assignee and/or transferee of the rights of Regalado Daroy.

Furthermore, in Criminal Case No. 88-443 before Branch 25 of the RTC of Misamis Oriental, complainant testified in open court that he came to know of the Deed of Absolute Sale (Exhibit "A") when the sheriff awarded the land to him (TSN, p. 3. Oct. 4, 1989). The Sheriff's Deed of Conveyance and Possession, however, was executed by the Provincial Sheriffs way back in April 11, 1972.

How indeed can complainant now have the temerity to claim that he discovered that the subject property was transferred only in 1984? And how could the Commission on Bar Discipline have overlooked the above evidence and believed the complainant "hook, line and sinker"?

2. The Commission on Bar Discipline erred in not giving credence and weight to the testimony/sworn statement of the Notary Public (Respondent's Annex "4") and the instrumental witnesses to the execution of the questioned Deed of Absolute Sale (Respondent's