

## EN BANC

**[ A.M. No. RTJ-89-318, March 25, 1997 ]**

**LUCIANA VDA. DE ARAGO, COMPLAINANT, VS. JUDGE PATERNO  
T. ALVAREZ, RESPONDENT.**

### DECISION

#### PER CURIAM:

This is an administrative complaint filed on 17 April 1989 by Mrs. Luciana Vda. de Arago against Judge Paterno T. Alvarez, Presiding Judge of Branch II, Regional Trial Court, Borongan, Eastern Samar, for grave misconduct in office and corrupt practices. The sworn complaint<sup>[1]</sup> alleges that respondent judge on several occasions demanded and actually received from complainant and her in-laws the sum of seventeen thousand pesos (P17,000.00) in consideration of promised positive results in Criminal Case No. (88-56) 046, entitled People of the Philippines v. Ricardo Ador, et al. for Robbery with Homicide, and in Civil Case. No: 88-162, entitled RGA Construction v. Froilan Yaona, et al. for Breach of Contract, both cases then pending before respondent's sala. The amount of P17,000.00 demanded and received by respondent judge is itemized and indicated as follows:

- "1. The amount of TWO THOUSAND PESOS (P2,000.00) was given to Judge Paterno T. Alvarez last August 23, 1988 by Mrs. Prescila Arago Racal and Mrs. Luciana Vda. de Arago at the residence of Mr. and Mrs. Maximo Galupo at Songco, Borongan, Eastern Samar, where Judge Alvarez is temporarily residing;
2. The amount of ONE THOUSAND PESOS (P1,000.00) was given to Judge Alvarez by Mrs. Prescila Arago Racal and Mrs. Luciana Vda. de Arago last September 16, 1988 at the Regional Trial Court Office at Oras, Eastern Samar;
3. The amount of FIVE THOUSAND PESOS (P5,000.00) was given by Mr. Perfecto A. Arago last November 15, 1988 at the house of Mr. and Mrs. Maximo Calupa at Songco, Borongan, Eastern Samar;
4. The amount of ONE THOUSAND PESOS (P1,000.00) was given by Mrs. Prescila Arago Racal and Mrs. Luciana Vda. de Arago to Judge Alvarez last December 1, 1988 at the house of Mr. and Mrs. Maximo Galupo at Songco, Borongan, Eastern Samar, and another ONE THOUSAND PESOS (P1,000.00) was given to same person at the same place, last December 2, 1988;
5. The amount of SIX THOUSAND PESOS (P6,000.00) which the driver of Hon. Paterno T. Alvarez asked from Mr. and Mrs. Restituto Arago

at their residence at Songco, Borongan, Eastern Samar last January 3, 1989 as fare of the children of the Hon. Paterno T. Alvarez in going to Manila;

6. And, the amount of ONE THOUSAND PESOS (P1,000.00) was given to Judge Alvarez by Mr. and Mrs. Restituto A. Arago last January 11, 1989 for his additional fare to Manila, all in all amounting to SEVENTEEN THOUSAND PESOS (P17,000.00);

7. In addition to the amount stated above, Judge Paterno T. Alvarez asked for two (2) second hand tires for the use of his jeep."<sup>[2]</sup>

In support of the complaint, complainant attached a Joint Affidavit of Prescila Arago Racal, Restituto Arago, Luciana Vda. de Arago and Perfecto Arago.

On 13 June 1989, the Court en banc required respondent Judge Paterno T. Alvarez to answer the complaint. As required, respondent filed his Answer dated 11 July 1989 which states that —

"At the outset, respondent Judge respectfully submits and admits that it is part of the hazards of his position that baseless and unfounded charges may be filed against him by disgruntled litigants who are not satisfied with the manner that he has resolved their cases.

The present complaint filed against me for alleged gross misconduct and violation of the Anti-Graft and Corrupt Practices Act is one such unfounded and baseless complaint which I vehemently deny.

The truth is that, accused in Criminal Case No. (88-56) 046, for Robbery with Homicide are known to be identified with Mayor Anacta who is a political enemy of the Aragos. It happened that Mayor Anacta is my compadre being a sponsor in the wedding of my son Nicasio Alvarez II. Because of this relationship the Aragos are of the belief that I will be influenced by the Mayor. . . .

The complainant is the sister-in-law of Mr. Arago who ran against Mayor Anacta in the January 1988 elections and lost to Mayor Anacta. There is, therefore, some political color to this case.

3rd Assistant Fiscal Celso F. Lorenzo, Sr. was formerly a Municipal Judge who resigned after President Aquino came into power and who was not reappointed to said position by the President. He got his appointment as 3rd Assistant Provincial Fiscal because of the intervention of Congressman Ramirez with whom the complainant is politically identified.

Fiscal Lorenzo filed a motion before me on October 28, 1988, requesting for the re-issuance of the warrant of arrest against accused Marcos Ador and his wife Maria Caspe, who were released on bail by the Municipal Trial Court x x x

Though how lowly the accused maybe compared with the complainant who is wealthy and influential and who owns the Arago Construction

Company, respondent Judge will not and will never ignore the rights of the accused to due process of law even if he faces threats on his life and Position x x x.

I held resolution of said motion in abeyance pending determination of the question as to whether or not evidence of guilt against the accused is strong. For this purpose, I required the prosecution to present its evidence. . .

Shortly before Fiscal Lorenzo filed a motion to transfer the said Criminal Case to Branch I, he approached me and told me that if I would not grant his motion for the re-issuance of the warrant of arrest as well as his motion to transfer the case to Branch I, he would file charges against me. . .

Because of the vigorous opposition of the defense that there was no legal ground to transfer the case to Branch I simply because Fiscal Lorenzo was also handling cases in said Branch, I had to deny the same x x x.

Fiscal Lorenzo then filed a motion for my inhibition x x x .

The Civil Case is still undergoing pre-trial, but because of the filing of this administrative case against me, I am going to inhibit myself from hearing said case.

Now, if the purpose of the complainant in giving me money in the total amount of P17,000.00 was to secure favorable decisions from me on the two cases, why did the complainant file this administrative complaint against me before her alleged bribe could bear fruit? This Honorable Court will please take note that this complaint was filed against me shortly after I denied the motion to transfer the criminal case to Branch I. If the complainant had already bribed me, why did she want to transfer the case to another branch? Why did the Fiscal move for my inhibition, if I had already been bought to render favorable decision in favor of the complainant in the criminal case?

The truth is that I had never asked or demanded and received any money from the complainant or her mother-in-law. The truth is that the Fiscal and the complainant were not happy that I did not grant the motion for the re-arrest of the accused Marcos Ador and his wife, Maria Caspe and that I denied the motion to transfer the criminal case to Branch I. That is why I am falsely charged of gross misconduct and violation of the Anti-Graft law in the instant complaint.

Without receiving evidence as to whether or not the evidence of guilt is strong, I could not order the re-arrest of the accused. For denying the said motion as well as the transfer of the case to Branch I and in following the law and my conscience, I am now the respondent in this false complaint. They wanted to remove me from said cases because they could not be sure that I would decide the cases in the complainant's favor, and in this objective, they have succeeded by filing of the motion for inhibition and this complaint.

Pursuant to the Court's Resolution dated 17 August 1989, complainant submitted her Reply on 20 October 1989 refuting respondent's answer. She maintains that the filing of the charges against respondent is not politically motivated because the latter is a close friend of the Arago family, frequently visiting the latter's home in Borongan, Eastern Samar, and usually dining with the family even before respondent was appointed Regional Trial Judge of Borongan, Eastern Samar, and long before the local elections of 18 January 1988 where Melchor Arago, brother-in-law of complainant, ran against Mayor Fidel Anacta; that the complaint for violations of the Anti-Graft and Corrupt Practices Law against respondent judge was filed not because complainant was disappointed when her request for reissuance of the warrant of arrest against the accused Marcos Ador and his wife Maria Caspe in the criminal case was denied by respondent but because as early as 23 August 1988, respondent began asking and demanding money from complainant and her father-in-law assuring them that he would exert influence upon Municipal Trial Judge Celerino Bagro, Sr. to immediately elevate the criminal case to Branch II of the Regional Trial Court of Borongan, Easter Samar, and even after the case was already elevated to his sala, respondent continued to demand money from the Arago family.

It is not also true, according to complainant, that Fiscal Celso Lorenzo, Jr. threatened to file charges against respondent if the latter would not grant the motion for the re-issuance of the aforestated warrant of arrest and the motion to transfer the case to Branch I, for the reason that the decision to file the administrative case against respondent Judge Alvarez was reached after the Arago family became utterly disappointed and disgusted with the respondent's unabated demands for money from the family.

Finally, complainant avers that respondent judge offered to return the P17,000.00 to the Aragos in return for the withdrawal of the complaint against him. A Joint Affidavit of Prescila Arago Racal and Restituto Arago was attached to the Reply.<sup>[4]</sup>

On 30 January 1990, the Court en banc issued a resolution referring the case to the Honorable Regina Ordonez-Benitez, Associate Justice of the Court of Appeals, for investigation, report and recommendation. However, Justice Benitez was not able to finish the investigation due to her retirement so that the case was reassigned to Associate Justice Corona Ibay-Somera on 31 October 1993.

As culled from the report of the investigating justice, during the investigation, complainant Luciana Vda. de Arago, Restituto Arago, Prescila Arago Racal and Perfecto Arago testified substantially on the following:

Eladio Arago, husband of complainant Luciana Vda. de Arago and son of Restituto Arago, was robbed and killed on 21 July 1988 by the accused in Criminal Case No. 88-10016. Restituto Arago is also an aggrieved party in the case and party litigant in Civil Case No. 88-162 against Froilan Yaona, et al., for Breach of Contract, both cases then pending before the sala of respondent Judge Alvarez. Respondent is known to the Arago family, being a frequent visitor in their house which is located in Barrio Songco, Borongan, Eastern Samar where respondent's boarding house is also located. It was respondent who initially offered to assist complainant

and Prescila Arago Racal with regard to said criminal case then undergoing preliminary investigation at the municipal trial court and the civil case pending in respondent's sala in return for pecuniary considerations when the driver, Rudy Salunoy, fetched them in the morning of the second week of August 1988.

The first amount of P1,000.00 was handed over to respondent himself by Prescila Arago Racal in the presence of complainant on 23 August 1988 in his boarding house. Since then, respondent demanded and received from complainant and her in-laws on the dates stated in the complaint, amounts of money, sometimes through his driver Rudy Salunoy, promising to help them in their two (2) cases. At one time, Perfecto Arago personally gave respondent P5,000.00 at the latter's boarding house. On 3 January 1989 another P6,000.00 was demanded by respondent judge and this time it was the respondent's driver Rudy Salunoy who was sent by respondent to receive the amount. The amount was needed by the respondent to pay for his children's transportation expenses in going to Manila. The last amount of P1,000.00 was personally received by respondent from Restituto Arago on 6 January 1989 when respondent himself went to the house of Restituto to thank the latter for the P6,000.00 he received earlier and to ask for additional money for his fare in going to Manila. After this last incident, the Arago family had a meeting and decided to put an end to all these demands for money by respondent judge because none of his promises to help them in the two (2) cases had materialized. They consulted their lawyers and ultimately filed the present complaint.

Respondent judge filed a Motion to Dismiss by Way of Demurrer to Evidence which in effect questions the credibility of complainant and her witnesses who according to respondent are all members of the same family, and that their claims run counter to the grains of human nature and are, therefore, completely incredible.

Complainant was required to comment on respondent's Motion to Dismiss by Way of Demurrer to Evidence. Complainant filed her opposition to the Motion, alleging that said Motion is without factual and legal basis, the same being based on presumptions of counsel and that the evidence presented by complainant — testimonial and documentary — if uncontroverted, will establish the guilt of respondent.

On 30 September 1991, the investigating justice resolved to deny the motion for lack of merit, stating that there is prima facie evidence against the respondent, unless the latter presents evidence to prove otherwise.

For his defense, respondent judge presented Judge Celerino Bagro, Sr., Rodrigo Salunoy and Bernardo Picardo as witnesses.

Respondent Judge Paterno T. Alvarez was the first witness. His direct testimony consisted of his affidavit (Exhibit "I") in which he alleged that the complaint was politically motivated. He asserted that Congressman Jose Ramirez is the cousin of complainant Luciana Vda. de Arago and that the Congressman was very interested in his dismissal from the service or transfer elsewhere. He cited two (2) instances when Congressman Ramirez met with him about the cases of the Aragos and about