

EN BANC

[A.C. No. 1370, April 18, 1997]

**ABDUL A. SATTAR, COMPLAINANT, VS. ATTY. PERCIVAL LOPEZ,
RESPONDENT.**

R E S O L U T I O N

KAPUNAN, J.:

Abdul A. Sattar filed on September 24, 1974 an administrative case against lawyer Percival Lopez.^[1] Respondent is now a regional trial court judge in Quezon City. He was first appointed to the judiciary as municipal trial court judge in April 1983.

Complainant charged respondent with having failed to file an appeal brief with the Court of Appeals resulting in the dismissal of complainant's appeal from a conviction by the trial court in a criminal case.

Complainant alleged that on November 16, 1973, he agreed to give to respondent the following amounts in consideration of respondent's preparing and filing an appeal brief in the Court of Appeals: P200 as retaining fee; P1,500 for printing expenses; and P1,500 in the event of complainant's acquittal by the appellate court. Complainant further alleged that he was asked by respondent to buy two bottles of liquor to be given to a Court of Appeals employee who would facilitate respondent's research, but that when he could not find the specified brand of liquor, respondent asked for P120 instead.^[2]

On October 28, 1974, respondent filed his answer alleging inter alia that: his acceptance of the case was predicated on the express promise of complainant to furnish him with the complete records of the case for the preparation of the brief, but that complainant failed to do so; respondent himself could not get the records as these were with the Solicitor General from September 7, 1973 to August 24, 1974; at the time respondent was contracted by complainant on November 16, 1973 to prepare the appeal brief, he was not informed that the appeal had already been dismissed on November 9, 1973; complainant informed him of such dismissal only on January 28, 1974; the amount of P 120 was given to him voluntarily by complainant for expenses in exploring the revival or reinstatement of the appeal; respondent promptly informed complainant of the futility of a revival or reinstatement of the appeal considering that the cause of the dismissal was the very negligence of complainant.^[3]

In a Resolution dated November 15, 1974, the Court referred the case to the Solicitor General for investigation, report and recommendation.^[4] Upon the effectivity of Rule 139-B of the Revised Rules of Court on June 1, 1988, the case was transferred to the Integrated Bar of the Philippines (IBP) for disposition.

Roughly twenty years from the filing of the case, on March 15, 1993, the IBP

Commission on Discipline, through Commissioner Vicente Q. Roxas, rendered a report (Commissioner's Report) recommending the suspension of respondent from the practice of law for a period of three months. The IBP Board of Governors, in its Resolution No. 01-94-067 resolved to adopt and approve the Commissioner's Report.

The conclusions of the Investigating Commissioner are as follows:

Complainant did not hire any counsel to follow up the dismissal of his appeal which fact he was informed of. In fact complainant testified on January 30, 1975 that while he was given leave from Muntinlupa Prison where he was serving sentence (TSN, Sattar, January 30, 1975, page 5) he was informed that his appeal of his conviction has been dismissed:

The appeal has been dismissed but prior to that or one week after the contract was made, because it was our agreement that I will secure some of the stenographic notes from the Court of First Instance in Quezon City, where I went there in November, I cannot remember the date but that was one week after the contract was made, they handed to me a letter of dismissal from the Court of Appeals, so I contacted him. (TSN, January 30, 1975, Sattar, pages 21-22).

Complainant reasoned that he could not hire counsel to appeal to the Supreme Court the decision of the Court of Appeals affirming the lower court decision because he could not afford it anymore. He said that it was his co-accused Francisco Gonzales who secured the services of and paid for his own private counsel (ibid., page 36).

To prove the fault of complainant in taking his time to hire counsel in his defense to undertake the appeal of the decision of the lower court, respondent cross-examined complainant in the Hearings:

Now, from the year 1971 up to November 16, 1973, did you try to secure the services of a lawyer in order to prepare your brief before the Court of Appeals?

Complainant answered:

I was looking for my co-accused because I have been indigent and it was our understanding that he will be the one to shoulder all the expenses when I could no longer locate him and that was the time I hired you as my lawyer. (pages 51-52).

The same question was answered by complainant:

Q- From 1971 up to November 15, 1973, did you engage the services of a lawyer?

A- I did not. (pages 78 to 79).

Q- You did not. Now will you please tell us why on November 16, 1973, all of a sudden you hired the services of a lawyer?

A- Because I had been looking for a good lawyer and Amirul Hadjirul told me that you are a brilliant lawyer, hence, I hired your services. (pages 79-80)

The Commission cannot give credence to the allegation of respondent-

attorney with respect to the fact that it was a condition for his acceptance of the case that the records of the case be furnished him by complainant, because the lawyer has the responsibility to exert his best efforts at the case which includes necessarily that he secure the records himself as part of his duty. The Commission therefore would rather believe complainant who testified that:

Q- And you promised Atty. Lopez or the respondent to bring over the records to his office in order that he could study your case, is it not?

A- Yes, but I told the respondent that when I went to the Court of First Instance, the court personnel informed me that the records has been forwarded to the Court of Appeals and I told him that I could no longer contact Atty. Calvario and you told me 'never mind, after all, I will be the one to research with the Court of Appeals.' (pages 93-94)

We cannot attribute fault in this regard to the respondent because his client knew that the records were being transmitted from the lower court to the Court of Appeals. Aside from this matter, no other allegations in the complaint was substantiated with proof primarily because the complainant stopped testifying against respondent. On April 16, 1975, the last recorded hearing was held wherein the complainant manifested that he had filed an affidavit of desistance in favor of respondent, having forgiven respondent because:

'every individual is subject to commit mistakes so that respondent Atty. Percival Lopez is but human to commit mistake. (pages 1-4, TSN Sattar, April 16, 1975, Office of the Solicitor General).'

The investigator then asked probing questions, disregarding the affidavit of desistance but the complainant no longer wanted to testify against respondent.

After the promulgation of Rule 139-B, all the cases against lawyers pending before the Office of the Solicitor General were endorsed to the Integrated Bar of the Philippines. When the new Commissioners were appointed to the Commission on Bar Discipline, several hearings were called but both complainant and respondent could no longer be located. Hence, this Commission considered this case submitted for resolution based on existing evidence.

Rule 139-B mandates that even if there is desistance by complainant, the investigation must proceed and continue. The wisdom of this provision is exemplified in this particular case because despite the fact that complainant has already desisted, from the existing evidence gathered up to the time complainant desisted which is sometime in the third full-scale hearing, there had been enough gathered to look into the character of the attorney and judge him on his actions.

There are two important points that have to be considered here. First is the admission by respondent that he accepted the case of complainant on November 16, 1973. Second, respondent admits that he was informed by complainant of the dismissal of the appeal with the Court of Appeals

one week after the complainant informed respondent that the clerk in the lower court had informed him of the November 9, 1973 Resolution of the Court of Appeals dismissing the appeal of complainant.

In the testimonies of complainant above quoted, we discover that his appeal with the Court of Appeals was dismissed because of inaction by the complainant himself from 1971 when the conviction was meted out up to November 16, 1973 when respondent was hired. This means that the dismissal of the appeal was not the respondent's fault because the date of the order of dismissal of the appeal by the Court of Appeals is November 9, 1973 whereas respondent was only hired on November 16, 1973. In that regard, respondent herein should not be blamed.

However, as to the other point, respondent, after he was hired on November 16, 1973, did not perform anything for the sake of complainant's case despite the fact that he has admittedly received compensation for the purpose of continuing the case on appeal. Respondent admits that even after he was informed by complainant of the dismissal of the appeal in the Court of Appeals, which was one week after respondent was hired, respondent did not undertake to do any service for respondent and did not even bother to return the money paid to him by the complainant if there was nothing more than can be done for the complainant. Respondent admits that he did not file any brief because the original records of the case were with the Office of the Solicitor General and therefore not with the Court of Appeals.

It is possible that when complainant went to the Court of Appeals, the records had just been delivered in view of the certification issued by the Records Department of the Court of Appeals that the Solicitor General had the records for some time. But it is highly unimaginable that respondent did not file any motion for reconsideration or at least inform the court as to his appearance or of having been recently hired as counsel for the complainant and as to the unavailability of the expediente which had been with the Office of the Solicitor General in order to seek a deferment of the deadline or seek reconsideration of dismissal from the Court of Appeals.

We cannot agree with the argument of respondent that the engagement of respondent was limited to the filing of an appeal brief because respondent himself admits that when respondent accepted the engagement, he accepted the whole case for appeal and not merely restricted to any one single motion or proceeding. That argument is only plausible if an original counsel has control of the case and respondent was hired merely as collaborating counsel only for purposes of filing the appeal brief. But that is not the case here. Respondent was hired as counsel with full control of the case and not merely as collaborating counsel.

Although we find that respondent is not responsible for the dismissal of the appeal by the Court of Appeals, we cite his lack of diligence in handling the case he has accepted on appeal. It is the duty of counsel to be vigilant in the prosecution or defense of the case for his client. The