

THIRD DIVISION

[A.M. No. MTJ-95-1063, February 09, 1996]

ALFONSO C. CHOA, COMPLAINANT, VS. JUDGE ROBERTO S. CHIONGSON, RESPONDENT.

RESOLUTION

DAVIDE, JR., J.:

The uncomplicated issues in this administrative complaint have been properly joined with the filing of the respondent's comment as required in the 1st Indorsement of 18 August 1995 of Hon. Bernardo P. Abesamis, Deputy Court Administrator. No further pleadings need be required from the parties.

In the complaint signed by Atty. Raymundo A. Quiroz as counsel for the complainant and verified by the latter, the respondent is charged with grave misconduct, gross bias and partiality, and having knowingly rendered an unjust judgment in Criminal Case No. 50322 entitled, *"People of the Philippines vs. Alfonso C. Choa."*

Criminal Case No. 50322 was for Perjury and initiated by the complainant's wife, Leni L. Ong-Choa, through the filing of a letter-complaint with the Office of the City Prosecutor of Bacolod City. This complaint arose from the alleged untruthful statements or falsehoods in the complainant's Petition for Naturalization dated 30 March 1989 which was docketed as Case No. 5395, of Branch 41 of the Regional Trial Court (RTC) of Bacolod City.

In due course, an Information was filed, in the Municipal Trial Court in Cities (MCTC) of Bacolod City by the Office of the Prosecutor, charging the complainant herein with perjury allegedly committed as follows:

That on or about the 30th day of March, 1989, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, did, then and there wilfully, unlawfully, feloniously and knowingly made untruthful statements of [sic] falsehoods upon material matters required by the Revised Naturalization Law (C.A. No. 473) in his verified "Petition for Naturalization" dated April 13, 1989, subscribed and sworn to before Notary Public Felomino B. Tan, Jr., who is authorized to administer oath[s], which petition bears Doc. No. 140; Page No. 29; Book No. XXIII; and Series of 1989, in the Notarial Register of said Notary Public, by stating therein the following, to wit:

5. I am married to a Filipino. My wife's name is Leni Ong Choa and now resides at 46 Malaspina Street, Bacolod City. I have two (2) children, whose names, dates and places of birth, and residences are as follows:

NAME	DATE OF BIRTH	PLACE OF BIRTH	RESIDENCE
------	------------------	-------------------	-----------

ALBRYAN ONG	July 19,	Bacolod City	46
CHOA	1981		Malaspina
			St.,
			Bacolod
			City
			46
CHERYL LYNNE			Malaspina
ONG CHOA	May 5, 1983	Bacolod City	St.,
			Bacolod
			City

xxx

10. I am of good moral character, I believe in the principles underlying the Philippine Constitution. I have conducted myself in a proper and irreproachable manner during the entire period of my residence in the Philippines in my relations with the constituted government as well as with the community in which I am living.

xxx

When in truth and in fact said accused knew that his wife Leni Ong Choa and their two (2) children were not then residing at the said address at No. 46 Malaspina Street, Villamonte, Bacolod City, having left the aforesaid residence in 1984, or about five (5) years earlier and were then residing at Hervias Subdivision, Bacolod City, that contrary to his aforesaid allegations in his verified Petition for Naturalization, accused while residing at 211, 106 Street, Greenplains Subdivision, Bacolod City, has been carrying on an immoral and illicit relationship with one Stella Flores Saludar, a woman not his wife since 1984, and begotting [sic] two (2) children with her as a consequence, as he and his wife, the private offended party herein, have long been separated from bed and boards [sic] since 1984; which falsehoods and/ or immoral and improper conduct are grounds for disqualifications [sic] of [sic] becoming a citizen of the Philippines.

Act contrary to law.

The case was docketed as Criminal Case No. 50322 and was assigned to Branch III thereof where the respondent is the presiding Judge.

After trial, the respondent Judge rendered judgment on 21 February 1995 and found the complainant herein guilty beyond reasonable doubt of the crime of perjury. The respondent Judge accordingly sentenced him to suffer the penalty of six months and one day of *prision correccional* and to pay the costs.

The complainant moved for a reconsideration of the judgment alleging that: (1) there is no basis for the conviction since his petition for naturalization had been withdrawn and therefore had become *functus officio*; (2) the petition for naturalization is a pleading, hence its allegations are privileged; and (3) his prosecution violates the equal protection clause of the Constitution. The last ground is founded on an admission made by a representative of the Office of the Solicitor General of her lack of knowledge of any perjury case filed based on a withdrawn or dismissed petition for naturalization.

The respondent Judge denied the motion for reconsideration for lack of merit in an order dated 31 March 1995.

The complainant filed the instant complaint on 14 July, 1995 and prayed for the removal of the respondent fudge from office. As grounds therefor, he alleges that:

(1) The respondent Judge is guilty of Grave Misconduct, Gross Bias and Partiality, and Knowingly Rendering An Unjust Judgment when he intentionally failed to divulge the next-door-neighbor relationship between him and the family of Leni Ong Choa and to disqualify himself from sitting in the criminal case on such ground as part of the grand design and preconceived intention to unjustly convict the complainant of the crime charged without due process.

(2) The allegations in the Information do not constitute the offense of perjury.

(3) The petition having been withdrawn with finality, it has become functus officio and it is as if the Petition was not filed at all so that whatever false statements were contained therein were no longer required by law and had ceased to be on a material matter.

(4) The respondent Judge admitted for prosecution Exhibit "P" (handwritten list of properties) even if this was self-serving as it was undated and unsigned; and Exhibit "Q" (letter of Leni Ong Choa's counsel to the complainant) even if it was also self-serving as there was no showing that he received the letter.

(5) The respondent Judge has sentenced the complainant to suffer a penalty higher than that provided by law, without applying the Indeterminate Sentence Law.

The respondent Judge refutes the charge in his Comment dated 12 September 1995, thus:

He denies being the next-door-neighbor of Leni Ong Choa there being a house, belonging to the Sia family, separating his house and that of Leni Choa; he and the rest of the members of his family are not acquainted with Leni Choa or any member of her family and had not exchanged greetings nor is he even a nodding acquaintance of Leni Choa or any member of her family.

He asserts that if the allegations in the Information do not constitute an offense, the complainant should have filed a Motion to Quash but he did not. Just the same, when the complainant stated in the Petition that he together with his wife and children lived at 46 Malaspina St., Bacolod City, he committed a falsehood under oath because the truth is two (2) years before the filing of the Petition, his wife and two (2) children were not living with him anymore, making him liable for perjury.

Respondent also avers that the complainant is not of good moral character contrary to what he stated in the Petition for Naturalization