

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 128

REMOVING MR. NICETAS F. ABENOJA FROM OFFICE AS CITY ATTORNEY OF
ORMOC CITY.

This is an administrative case against City Attorney Nicetas F. Abenoja of Ormoc City for alleged irregularities committed by him while he was assistant provincial fiscal of Leyte involving dereliction of duty, negligence and conduct prejudicial to the best interest of the service. The charges were investigated by a special investigator of the Department of Justice who found the charges against the respondent substantiated.

It appears that a criminal case for illegal fishing filed with the justice of the peace court of Maasin, Leyte, was, after preliminary investigation, forwarded to the Court of First Instance where it was given docket No. R-802. The record was received in the office of the Clerk of Court on the morning of August 18, 1950, by Eugenio Segun, a clerk therein. It consisted of 24 pages including three written confessions of the four accused. On the same day that it was received and docketed in the Clerk of Court's office, it was handed to Flaviano Orit, clerk-stenographer in the office of the Provincial Fiscal at Maasin, and it was kept in the last-mentioned office until October 31, 1950, when it was returned to the Clerk of Court together with the information signed by Assistant Fiscal Andres T. Delfino.

From October 31, 1950, to January 9, 1951, the record was kept by Segun inside a trunk which, together with the key thereof, was in his custody. In accordance with the practice in that Court, the record was given to the Clerk of Court one day before the trial, or on January 9, 1951. On the morning of January 10, the date of trial of the case, Fiscal Abenoja borrowed the record. On the same day the Fiscal filed a motion for dismissal, and the motion was immediately granted in open court.

The motion stated that the users of the dynamite had been vaguely identified; that in his investigation the respondent clearly found out that the accused were not the real persons who had committed the crime charged in the information because, according to the witness, Felipe Cornejos, the latter had only confiscated from the accused two

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sea glasses and three bows and arrows, instruments used in catching fish not prohibited by law.

Having learned of the dismissal of the aforesaid criminal case, Attorney Filemon Saavedra and Sebastian G. Kangleon, chief of police of Maasin, on May 15, 1951, filed administrative charges against the Clerk of Court, Assistant Fiscal Abenoja and their subordinates, charging them with removing the three affidavits of the accused from the expediente to facilitate the quashing of the case. Attached to the complaint was an affidavit of the wife of the accused Alipio Arong, since deceased, stating that she had been informed by her husband that he had given the respondent fiscal P150 to fix his case.

It has been duly established that the confessions of the accused were stolen from the record. Justice of the Peace Ismael D. Villamor was positive that the record consisted of 24 pages, properly numbered, including the said confessions. Assistant Fiscal Delfino also was positive that the three confessions formed part of the expediente when he drew up the information on October 11, 1950. In fact, according to Fiscal Delfino, he relied mainly on these confessions and he called the affiants to his office to verify the truth and voluntariness of the same.

To conceal the removal of the confessions, the paging of the record was changed by erasures which are manifest to the naked eye. Fiscal Delfino and Justice of the Peace Villamor declared that those erasures did not exist when the case was still in their hands.

From the above recital, there are strong reasons to believe that the respondent fiscal is guilty not only of gross negligence but also of direct participation in the removal of the three missing affidavits and of malicious dismissal of the case. This is borne out by the remarkable haste in which he asked for the dismissal of the case, without so much as bothering to inquire for the missing papers, which from all indications he must have known. To judge from his motion to dismiss, he relied entirely on the testimony of one policeman. He did not summon the other policeman who could have supplied the evidence necessary to warrant prosecution and who could have identified the exhibits consisting of nine pieces of piston with fuses, two cans of dynamite, one jar of "lagtang" (fish poison), and dead fish seized from the accused fishermen. If he was not a party to the loss of the missing papers, he could have subpoenaed the justice of the peace, who could have testified on the defendant's confessions in the form of secondary evidence, and the chief of police of Maasin who filed the complaint in the justice of the peace court.

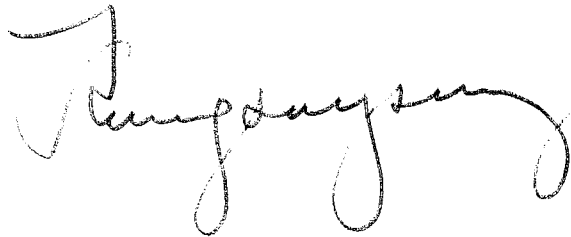
Further indications of respondent's complicity are (1) the fact that he coached Segun on what to testify at the investigation, (2) the fact that he sent Segun a two-peso bill thru his stenographer, Flavinno Orit, which was delivered to his (Segun's) son, and (3) the fact that he was instrumental in the repudiation by the wife of Alipio Arong, one of the accused for illegal fishing, of her affidavit in which she stated that her husband had gotten from her ₱150 to be given to the Fiscal to fix the case and that her husband had told her that the amount had actually been given to the respondent. This affidavit was clearly hearsay and was not good evidence, yet the defendant's tampering with said witness leads to the suspicion that there was some truth in what she had said.

Respondent's complicity is further clearly manifested by his reluctance or refusal to refile the information notwithstanding the existence of duplicate copies of the confessions and the insistent instruction of the provincial fiscal who wrote him not less than six times. It was only after the sixth letter and after the lapse of one year and a half since the dismissal of the case that the same was reinstated.

It is interesting to observe in this connection that after the trial of the case, which was handled by another fiscal, the defendants were found guilty and sentenced accordingly.

In view of the foregoing, I find the respondent guilty of the charges, the nature of which renders him totally unfit to remain in the public service as a prosecuting attorney. Wherefore, and upon the recommendation of the Secretary of Justice, Mr. Nicetas F. Abenoja is hereby removed from the service as city attorney of Ormoc City, effective upon receipt of a copy of this order, with prejudice to reinstatement in any government office.

Done in the City of Manila, this 18th day of July, in the year of Our Lord nineteen hundred and fifty-five, and of the Independence of the Philippines, the tenth.



By the President:


MARIANO BENKO, Jr.
Assistant Executive Secretary