

MALACANANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES
ADMINISTRATIVE ORDER NO. 250

REPRIMANDING ASSISTANT CITY FISCAL ARSENIO ALCANTARA OF MANILA.

This is an administrative case against Mr. Arsenio Alcantara, Assistant City Fiscal of Manila, for partiality, abuse of discretion, malicious prosecution and incompetence, which was investigated by a special attorney of the Department of Justice.

These charges were the offshoot of a complaint for nonpayment of wages filed with the Wage Administration Service (WAS) against Mr. Manuel Buenafe and his wife by their maid, Felisa Avancena, through her counsel, Atty. Ursula Dajao. Based on incidents which happened therein and in the PCAC where Avancena through Atty. Dajao also denounced the Buenafes, the latter filed with the City Fiscal's Office of Manila criminal charges for libel, perjury, oral defamation and threats to kill against Atty. Dajao and Avancena, all of which were assigned to Fiscal Alcantara for investigation. The Buenafes likewise filed a civil action for damages in the Court of First Instance of Manila against Atty. Dajao and Avancena for allegedly uttering certain defamatory words. In the civil case, Atty. Dajao presented a counterclaim for malicious prosecution and she also filed in behalf of her client a civil action against the Buenafes for the collection of unpaid wages. For lack of evidence, the civil action brought by the Buenafes against Atty. Dajao and Avancena was dismissed and Atty. Dajao was awarded ₱5,000 as damages plus attorney's fees of ₱500. The court also sentenced the Buenafes to pay Avancena her unpaid wages and court expenses.

After the preliminary investigation, Fiscal Alcantara prepared a memorandum recommending the dismissal of the criminal charges but before submitting the same to the City Fiscal for approval, he suggested to the parties an amicable settlement of their controversy. The settlement having failed, respondent reconsidered his views by filing in court two informations for grave threats and grave oral defamation against Atty. Dajao alone, while dismissing the charges for libel and perjury. Before arraignment, Atty. Dajao requested a reinvestigation of the two cases which was granted. The cases were assigned to then Assistant City Fiscal Jose B. Jimenez who, after a reexamination of the evidence adduced, recommended the dismissal thereof which recommendation was approved by the City Fiscal.

Based on the actuations of Fiscal Alcantara during the preliminary investigation of the four criminal cases, the complainant herein, Atty. Dajao, has filed the instant administrative case against him. Complainant alleged that in filing the two informations for grave threats and grave oral defamation against her

respondent acted with partiality, malice and grave abuse of discretion and also showed himself unfit to discharge the duties of his office. Respondent denied these charges, claiming that there was a prima facie case against complainant to warrant her prosecution and that if there was any doubt as to the sufficiency of the evidence, it was a matter for the court to decide.

The investigator found no evidence to substantiate all the charges except that of abuse of discretion, for which he recommended respondent's suspension for two months without pay.

With respect to the information for grave threats, respondent claims that he based the same on the testimony of one Pedro Ocampo, assistant to Mr. Buenafe in the Maritime Commission, that complainant in the heat of anger stated in the presence of certain WAS officers and employees that "if Felisa Avancena will not get paid, they will kill the Buenafes."

I agree in the findings of the investigator that the threatening statement just quoted is insufficient to establish a prima facie case against complainant, especially if considered in connection with the other facts and circumstances surrounding this case. The statement simply conveys the idea that Avancena and other persons sympathizing with her would kill the Buenafes if said maid were not paid her accrued wages. If complainant's intention were to make herself a party to the killing, she would have used the term "we" instead of "they" in the statement "they will kill the Buenafes." Moreover, I cannot give credence to Ocampo's statement, for aside from being uncorroborated, it was given by a subordinate in favor of his superior. Upon cross-examination, Ocampo admitted that he did not know to whom the word "they" referred. On the other hand, complainant denied having made such utterance and she was corroborated in this regard by a disinterested and credible witness.

Even admitting that complainant uttered those threatening words, she should have been charged only with "light" instead of "grave" threats because Ocampo testified that complainant uttered the same in the heat of anger and there is no evidence on record to show that she intended to carry said threat into execution. These extenuating circumstances were not taken into account by respondent in filing the information for grave threats against complainant.

As regards the information for grave oral defamation, respondent claims that it was based on the following testimony

of Mr. Buenafe during the preliminary investigation of the four criminal cases:

"I was also requested to appear before the Presidential Complaints and Action Committee in Malacañang which I did to explain a charge that I maltreated a certain maid who used to work with us, that I did not pay her a single centavo, that we abducted her, we got her without the consent of her parents."

In the information for grave oral defamation, respondent alleged that complainant uttered the following defamatory remarks against the Buenafes: "Savages, kidnappers, inhuman, impolite, cheaters, swindlers, criminals." Respondent admitted that these defamatory words were not actually stated by Mr. Buenafe during the preliminary investigation but that he deduced the words "savages, criminals and inhuman" from the word "maltreated" used in Buenafe's testimony; the terms "swindler, cheater and impolite" from the charge that Buenafe did not pay Avancena a single centavo; and the word "kidnapper" from the statement that he allegedly abducted the maid.

Respondent seeks to justify his actuation in this regard by explaining that in an information for oral defamation it is not necessary that the defamatory charge be made in direct terms but that it may be made by allusion, inference, or expressions of belief or opinion. In the light of the rule that in any prosecution for libel or oral defamation, the offensive expression must be set out verbatim, I consider the explanation of respondent unsatisfactory. And even if respondent's contention were correct, I find the offensive words incorporated in the information for grave oral defamation too remote to be deduced from the aforementioned testimony of Mr. Buenafe and that the deductions made do not faithfully depict the actual words allegedly uttered by complainant.

While it is true that the subsequent dismissal of an information filed by a fiscal upon reinvestigation by another fiscal and the failure of the civil action arising therefrom do not by themselves establish abuse of discretion on the part of the fiscal filing the same, yet there may be abuse if the facts and circumstances surrounding this case are taken into consideration, such as: (1) the memorandum of respondent recommending dismissal of the four criminal cases for insufficiency of evidence; (2) lack of additional evidence submitted after making the memorandum to justify a reversal of his previous stand; and (3) the proposition

of counsel for the Buenafes made at the suggestion of respondent that the four criminal cases as well as the civil action for damages filed by the Buenafes would be withdrawn provided that the complaint of Avancena for unpaid wages were also withdrawn.

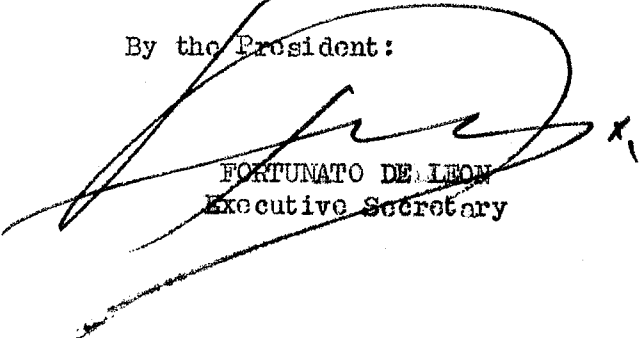
For the foregoing, I find that respondent committed abuse of discretion in filing the informations for grave threats and grave oral defamation against complainant and in alleging in the latter offensive words of mere serious import than, and entirely different from, the words attributed to Dajao by Buenafe in his testimony during the preliminary investigation.

Wherefore, respondent is hereby reprimanded and warned that a repetition of similar acts would be dealt with more severely.

Done in the City of Manila, this 30th day of July, in the year of Our Lord, nineteen hundred and fifty-seven, and of the Independence of the Philippines, the ~~twelfth~~.

Carlo R. Torcia

By the President:


FORTUNATO DE LEON
Executive Secretary