

**MALACAÑANG  
MANILA**

**BY THE PRESIDENT OF THE PHILIPPINES**

**ADMINISTRATIVE ORDER NO. 52**

**IMPOSING THE PENALTY OF DISMISSAL FROM SERVICE ON  
RESPONDENT OSCAR B. CORPUZ, 1<sup>st</sup> ASSISTANT CITY PROSECUTOR OF  
SAN FERNANDO, LA UNION.**

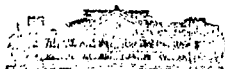
Quoted hereunder are the findings of facts and law by the Presidential Anti-Graft  
Commission (PAGC) embodied in its Resolution dated November 30, 2002:

**“THE CASE**

On September 6, 2002, the Commission received an indorsement letter from the Department of Justice, dated 05 September 2002, signed by the Hon. Jovencito R. Zunio, Chief State Prosecutor, indorsing and transmitting the entire records of Department of Justice Adm. Case No. 02-0017-FS entitled, “Jacky Rowena Tiu, et al., vs. Asst. City Prosecutor Oscar B. Corpuz, City Prosecution Office of San Fernando City, La Union”.

By virtue of such indorsement, the Commission commenced the administrative investigation against 1<sup>st</sup> Assistant City Prosecutor Oscar B. Corpus.

The respondent is allegedly guilty of gross neglect of duty, and/or inefficiency and incompetence in the performance of official duties when he erroneously charged the accused Zhang Du a.k.a. Wilson Zhang and Henry Ong only as accessories and not as principals to the crime of kidnapping for ransom despite the fact that the evidence against the two



accused were sufficient to establish probable cause that they were co-conspirators in the felony allegedly committed.

The complaint arose from the issuance by the respondent of a resolution dated November 19, 2001, wherein he charged six (6) accused as principals, in the kidnapping of Jacky Rowena Tiu, namely:

1. XU YOU KWANG alias TONY CO; JOHNNY CO
2. SHI JIAN HUI alias JACKY SY
3. WU CHANG Y LIM
4. LIM JIANG FENG alias JASON LIM
5. SHI CHUNG QI alias JACKY OCAMPO Y SY
6. ZHANG XI WANG alias MICHAEL ZHANG;

and two (2) as accessories, namely:

1. ZHANG DU alias WILSON ZHANG
2. HENRY ONG.

The Resolution was thereafter made the basis of the Information which was filed with the trial court. As a result of these alleged erroneous findings by the respondent, Zhang Du was able to post bail and was released from detention. Henry Ong on the other hand was able to evade prosecution and is still at large. This event prompted the victim, Jacky Rowena Tiu to file an administrative complaint with the DOJ against the herein respondent prosecutor.

The respondent was afforded due process in the proceedings conducted before the DOJ and was given the opportunity to defend himself. On August 5, 2002, a Formal Charge was issued by the DOJ charging the respondent with gross neglect of duty, and/or inefficiency and incompetence in the performance of official duties.



In the proceedings before the Commission, the respondent was required to submit his Answer and a preliminary conference was scheduled on October 14, 2002.<sup>1</sup> A continuation of the said conference was held last October 28, 2002 wherein the parties were required to submit their respective position papers.<sup>2</sup>

### **THE CHARGE**

Violation of Section 3 (e), Republic Act 3019, as amended, in relation to Sec. 7 (a)(ii) and Sec. 7 (b)(v) of Department Circular No. 84, s. 2000, in relation to Sec. 27 (i) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

### **THE ISSUE**

Whether Or Not The Respondent Is Liable To The Charge Filed Against Him.

### **THE COMMISSION'S RULING**

The defense of the respondent is principally based on the discretionary power he exercised as prosecutor. Every prosecutor has the prerogative to classify the offense committed, classify the participation of the accused in the crime perpetrated, the determination of the presence of a prima facie case and the discretion of whether or not to institute criminal action in court.

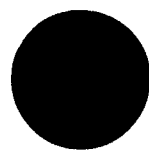


However, this exercise of discretion is not absolute. It must be exercised on the basis of the attendant facts and circumstances and on the

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<sup>1</sup> Records pp. 35

<sup>2</sup> Records pp. 77



evidence presented and must be in accordance with law. In the exercise of such discretion, the prosecutor must see to it that no substantial rights are affected or prejudiced. It presupposes the exercise thereof in accordance with law and guided by the applicable legal principles. In other words, discretion must be exercised regularly, legally and within the confines of procedural due process, i.e., after evaluation of the evidence. Any order issued in the absence thereof is not a product of sound discretion but of whim and caprice and outright arbitrariness amounting to grave abuse of discretion.

Grave abuse of discretion assumes that the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>3</sup>

Respondent is clearly guilty of grave abuse of discretion and ignorance of the law when he classified the participation of Zhang Du and Henry Ong as accessory to the crime of kidnapping for ransom when it clearly shows that no evidence to this effect has been submitted or borne by the record except their self-serving testimonies.

Article 19 of the Revised Penal Code (RPC) classified the following as accessories:

‘those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.
2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.



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<sup>3</sup> Alafriz vs. Nable, 72 Phil. 278

3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.'

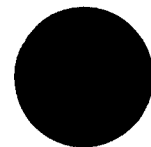
The acts of Henry Ong do not fall in any of the above-mentioned categories. No evidence or circumstances would show that he profited himself from the effects of the crime, neither did he assist the other accused to profit from the effects thereof. He did not conceal nor destroy the body of the crime or the effects or instruments thereof, and neither did he harbor, conceal or assist in the escape of the principals of the crime.

The respondent tried to reason out in his resolution that he charged Henry Ong as an accessory because there is no showing that the latter participated in the criminal design, nor did he cooperate in the commission of the felony. He stated further that there are indications that Ong had knowledge of the commission of the crime and that he lent his car and assisted the six respondents to profit by the effects of the crime and even helped them in their escape.

This is an erroneous application of the law and a complete misappreciation of the facts since an accessory participates after the fact of the commission of the felony. In this case, Ong's car was used by his cohorts in kidnapping Jacky Rowena Tiu. Were it not for Ong's car, the felony could not have been committed. Ong cooperated in the commission of the offense by another act i.e., by furnishing his other co-conspirators with the Mitsubishi Adventure without which the crime of kidnapping would not have been accomplished. Henry Ong's participation therefore is that of a principal by indispensable cooperation as contemplated in Article 17 of the Revised Penal Code and not as an accessory.



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The fact that Ong has evaded prosecution and is still at large up to the present should have been considered also by the respondent since this shows that Ong resorted to flight. Flight evidences culpability and a guilty conscience, and it strongly indicates a guilty mind or betrays the existence of a guilty conscience.<sup>4</sup>

There is more evidence on hand which would show that the six (6) individuals charged as principals are co-conspirators with Ong and Zhang Du compared to the baseless assumptions and weak evidence considered by the respondent in classifying them as accessories to the crime of kidnapping. It is impossible for an experienced prosecutor like the respondent herein to have overlooked these circumstances or made this patent mistake since these things are basic in criminal law.

With respect to Zhang Du, we agree with the complaint DOJ that the following circumstance should have been considered by the respondent in the classifying his criminal liability:

1. All of the accused are almost of the same age, jobless and visiting native Chinese from Fookien, China.
2. All of the same stay in one and the same place and had common address in Tuesday St., Saint Joseph Subdivision, Bacoor, Cavite.
3. Zhang Du alleged that he is a businessman but no proof whatsoever was presented on what specific business he is engage in.
4. Zhang Du was positively identified by the kidnap victim as one of the kidnapppers.
5. The evasion from prosecution of Henry Ong and his flight.

The respondent relied heavily on the denial and alibi of Zhang Du that he just visits Zhang Xi Wang to watch television there but the fact is that the latter lives in Fortune Village Valenzuela City and not in the safehouse in Bacoor, Cavite where both of them were arrested. If Zhang Xi Wang was charged by the respondent as principal for being a co-conspirator, we find no reason why Zhang Du should not be charged the



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<sup>4</sup> People v. Lopez, Jr., 245 SCRA 95 (1995)

same since they were both arrested in the same premises and at the same time.

Zhang Du's bare denial and alibi cannot be given weight as against the categorical and positive identification by Jacky Rowena Tiu. The Supreme Court has ruled, time and again, that alibi is the weakest of all defenses and cannot stand against strong and positive identification.<sup>5</sup> As held in the case of *People of the Philippines vs. Robert Dinglasan y Mangino @ Obet, Reynaldo Tapia y Sorao*.<sup>6</sup>

"Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law."

Further, it is axiomatic that positive testimony prevails over negative testimony.<sup>7</sup> The victim positively identified Zhang Du as one of the kidnappers. This statement deserves greater weight than the self-serving denial of the latter.

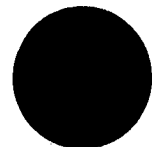
The statements of the other accused absolving Zhang Du should have also been discarded by the respondent because those persons maintain their innocence and is in no position to declare that Zhang Du did not participate in the felony. This should have invited the attention of the respondent because by making such declaration, the other accused impliedly admitted their liability, i.e., they were the ones who committed the crime and Zhang Du is not a participant thereto. We agree with the complaint that by giving credence to the statements of the accused, the respondent raised doubts on the positive identification made by the victim herself and arrogated unto himself the duty which properly pertains to the



<sup>5</sup> *People of the Philippines v. Antonio Violin, Remegio Yazar, Cesar Allego et al.*, G.R. Nos. 114003-06 January 14, 1997

<sup>6</sup> G.R. No. 101312, January 28, 1997

<sup>7</sup> *People Of The Philippines v. Gerry Sarabia*, G.R. No. 124076, January 21, 1997



judge with respect to ascertaining the credibility of the testimony of the accused and the witnesses.

Based on the foregoing circumstances and evidence, no other implication can be derived therefrom except the fact that there is conspiracy among the eight (8) accused. Respondent Corpuz failed to appreciate this. He clearly manifested that he is incompetent and inefficient in the performance of his official duties and in effect caused undue injury to the victim/complainant. He intentionally overlooked certain facts and circumstances of weight and influence which are material to the case including the circumstances which show that the accused acted in concert and conspired with each other to perpetrate the kidnapping of Jack Rowena Tiu.

Respondent is liable for violation of Sec. 3 (e) of R.A. 3019. In *Ponce de Leon v. Sandiganbayan*,<sup>8</sup> the Supreme Court enumerated the elements of this offence as follows:

- “(1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers or private persons commit the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they cause undue injury to any party, whether the Government or a private party;
- (4) That such injury is caused by giving unwarranted benefits, advantage or preference to such parties;
- (5) That the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.”

The herein respondent is a public officer within the meaning of the law. He caused undue injury to the government as well as to the private complainant, who was a victim of the felony, when he erroneously classified Ong and Du as mere accessories instead of principals.



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<sup>8</sup> 186 SCRA 745 (1990)



Respondent gave unwarranted benefits to the accused in this case through gross negligence.

In order that one may be held administratively (criminally) liable under the above-cited section, the act of the respondent (accused) which caused undue injury must have been done with evident bad faith or with gross inexcusable negligence.<sup>9</sup> Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other person may be affected.<sup>10</sup> It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.<sup>11</sup>

Inefficiency implies negligence, incompetence, ignorance and carelessness. A person would be inexcusably negligent if he failed to observe in the performance of his duties that diligence, prudence and circumspection which the law requires in the rendition of public service.<sup>12</sup> This clearly shows that respondent herein is remiss in the performance of his official duties and failed to exercise due diligence in the exercise thereof, and completely disregarded or failed to consider the evidence and circumstances attendant to the case as well as his misappreciation of the provisions of law which he administers and his relegation unto himself of the power which only the trial court can exercise.



It is respondent's duty to see to it that all the parties are accorded due process of law and not only the accused. The victims whose rights have been violated have to be protected also. By reason of the office he

<sup>9</sup> Alejandro v. People, 170 SCRA 400, 405, 407 [1989]

<sup>10</sup> Ballentine's Law Dictionary, 3<sup>rd</sup> Edition, p. 537

<sup>11</sup> Bouvier's Law Dictionary, Vol. I, 3<sup>rd</sup> Revision, p. 1383

holds, the respondent is expected to be more circumspect and exhaustive in the investigation of the cases filed before him. He should see to it that justice is properly administered and that no party is prejudiced thereby.

### THE PENALTY

There is substantial evidence on record which shows that respondent Oscar B. Corpuz is liable for violation of Section 3 (e), Republic Act 3019, as amended, in relation to Sec. 7 (a)(ii) and Sec. 7 (b)(v) of Department Circular No. 84, s. 2000, in relation to Sec. 27 (i) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, for Gross Neglect of Duty, Inefficiency and Incompetence in the Performance of Official Duties.

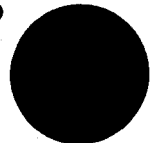
WHEREFORE, PREMISES CONSIDERED, the Commission respectfully recommends to Her Excellency, President Gloria Macapagal-Arroyo, that respondent OSCAR B. CORPUZ, 1<sup>st</sup> Assistant City Prosecutor of San Fernando, La Union be DISMISSED FROM SERVICE.

SO RESOLVED.”

After a careful review of the records of the case, this Office affirms *in toto* the findings of the Commission and holding the respondent GUILTY AS CHARGED for VIOLATION OF SECTION 3 (E) OF R.A. 3019 AS AMENDED, IN RELATION TO SEC. 7 (A)(II) AND SEC. 7 (B)(V) OF DEPARTMENT CIRCULAR NO. 84, S. 2000, IN RELATION TO SEC. 27 (I) OF RULE XIV OF THE OMNIBUS RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292, FOR GROSS

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<sup>12</sup> Nenita De Vera Suroza v. Judge Reynaldo P. Honrado and Evangelista S. Yuipco (A.M. No. 2026. December 19, 1981) Citing In Re Climaco, Adm. Case No. 134-J, Jan. 21, 1974, 35 SCRA 107, 119



NEGLECT OF DUTY, INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES.

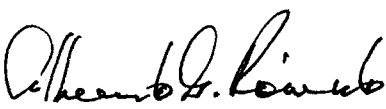
WHEREFORE, in view of the foregoing considerations, and as recommended by the Presidential Anti-Graft Commission (PAGC), the penalty of DISMISSAL FROM SERVICE, is HEREBY IMPOSED on respondent OSCAR B. CORPUZ, 1<sup>st</sup> ASSISTANT CITY PROSECUTOR OF SAN FERNANDO, LA UNION.

SO ORDERED.

Done in the City of Manila, this 26 th day of November in the year of Our Lord, year two thousand two.



By the President:



**ALBERTO G. ROMULO**  
Executive Secretary

