

A.M. No. RTJ-17-2486 – RE: INVESTIGATION REPORT ON THE ALLEGED EXTORTION ACTIVITIES OF JUDGE GODOFREDO B. ABUL, JR., BRANCH 4, REGIONAL TRIAL COURT, BUTUAN CITY, AGUSAN DEL NORTE

Promulgated:

September 3, 2019

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DISSENTING OPINION

HERNANDO, J.:

I dissent in this case.

The death of an accused even after conviction but during the pendency of his/her appeal shall result in the dismissal of the criminal case against said accused. This dismissal is triggered by the presumption of innocence accorded every accused under the Constitution.

Meanwhile, the death of a respondent public servant during the pendency of a mere administrative case against him/her shall not result in the dismissal of said case except in the following instances: a) if respondent's right to due process was not observed; b) there is presence of exceptional circumstances in the case of equitable and humanitarian reasons; and c) the kind of penalty imposed. This principle is not founded on any express Constitutional or statutory provision. Its only basis, per jurisprudence, is public policy, and that is, that public office is a public trust.

I respectfully submit that the non-dismissal rule in case of death of a respondent public servant in administrative cases is against the Constitutional right to presumption of innocence of an accused, as I shall discuss below.

The case at bench involves the alleged extortion activities of Judge Godofredo B. Abul, Jr. (Judge Abul) wherein he purportedly asked for amounts ranging from PhP 200,000.00 to PhP 300,000.00 from detainees of the Provincial Jail of Agusan in exchange for their release from prison or dismissal of their criminal cases. After the Office of the Court Administrator (OCA) received a letter from Rev. Father Antoni A. Saniel alleging Judge Abul's activities, it conducted an investigation on the matter. Eventually, the OCA found that Judge Abul committed grave misconduct constituting violations of the Code of Judicial Conduct, a serious offense, and thereafter

recommended that he be fined in the amount of PhP 500,000.00, to be deducted from his retirement gratuity.

It is important to note, however, that before the Court could render a judgment on Judge Abul's administrative case, he met an untimely death¹ when he was targeted and killed by an unidentified motorcycle-riding shooter while he was about to leave his house. In fact, his spouse likewise sustained gunshot wounds during the ambush but fortunately survived.²

Because of jurisprudence, Judge Abul's death does not result in the dismissal of the administrative complaint against him since the Court already acquired jurisdiction over the case and continues to exercise the same until it is finally resolved.³ In other words, "[t]he death or retirement of any judicial officer from the service does not preclude the finding of any administrative liability to which he shall still be answerable."⁴

The *ponencia*, while adopting the findings and recommendation of the OCA, modifies the penalty to be imposed on the late Judge Abul. Due to the latter's guilt as to the administrative charge of gross misconduct, the *ponencia* declares and orders the forfeiture of all of his retirement benefits, excluding accrued leaves.

According to Section 8 of A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross misconduct constituting violations of the Code of Judicial Conduct is considered as a serious charge. Section 11 of the same issuance provides for the following penalties:

SEC. 11. Sanctions. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.⁵

The second sanction can no longer be imposed since Judge Abul already passed away (although he was preventively suspended), while the

¹ Died on August 5, 2017 by multiple gunshot wounds at 68 years old.

² *Rollo*, pp. 95-96.

³ *Gonzales v. Escalona*, 587 Phil. 448, 462-463 (2008).

⁴ *San Buenaventura v. Migriño*, 725 Phil. 151, 162 (2014).

⁵ Section 11, A.M. No. 01-8-10-SC, RE: Proposed Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, September 11, 2001.

third sanction appears to be too mild a penalty and not commensurate with the offense. Presumably recommending the first sanction and considering the gravity of his offense and his intervening death, the OCA recommended that Judge Abul be fined in the amount of PhP 500,000.00 to be deducted from his retirement gratuity. However, the *ponente* went further and ordered the forfeiture of all of Judge Abul's benefits, excluding accrued leaves, even after his death.

Although I subscribe to the *ponencia* in finding that Judge Abul may be adjudged guilty of gross misconduct which is a serious offense, I am compelled to register my reservations to its pronouncement that the administrative case against the late jurist should continue notwithstanding his death and that all of his retirement benefits, excluding accrued leaves, should be forfeited.

I berth my reservations on the following grounds: (1) the presumption of innocence should stand before a decision on the administrative case is rendered; (2) since death of an accused extinguishes personal criminal liability as well as pecuniary penalties arising from the felony when the death occurs before final judgment in criminal cases, the standard for an administrative case should be similar or less punitive; and (3) humanitarian reasons call for the grant of death and survivorship benefits in favor of the spouse and the heirs, if the case will not be dismissed.

On the first ground

Article 3, Section 14 of the 1987 Constitution provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved." Indeed, until an accused is adjudged guilty by proof beyond reasonable doubt, there is a presumption of his or her innocence. Even if the case at bench is an administrative case, We should apply this presumption by analogy since Judge Abul's death preceded the promulgation of the decision which imposed upon him the penalty of dismissal. Simply put, he should be presumed innocent until a decision is finally rendered, be it in his favor or not. Unfortunately, even if Judge Abul was able to file his Comment on the charges against him, he could no longer submit other evidence which could have helped his cause if he truly was innocent like he previously claimed. Nonetheless, the Court declared him guilty of gross misconduct based on the existing evidence and the investigation conducted by the OCA, and then imposed the ultimate penalty of forfeiture of all of his benefits despite his death.

On the second ground

Article 89(1) of the Revised Penal Code states:

Article 89. *How criminal liability is totally extinguished.* –
Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

Based on the aforementioned provision, the death of the accused extinguishes the criminal liability. Meanwhile, the pecuniary penalties will only be extinguished if the accused dies before final judgment is rendered. If this is the standard for criminal cases wherein the quantum of proof is proof beyond reasonable doubt, then a lower standard for administrative proceedings such as the case at bar should be followed, even if the quantum of proof therein is substantial evidence.⁶

I am aware, however, that the Court has previously pronounced in *Gonzales v. Escalona*⁷ that an administrative case, which is not strictly personal in nature, is not automatically terminated upon the death of respondent. This is because public office is a public trust which needs to be protected at all costs, even beyond the death of the concerned public officer. I reiterate that this is against the Constitution. Even then, I wish to point out that if in criminal cases, death extinguishes criminal and civil liability (arising from the offense), why should it be so much stricter when it comes to administrative cases with exceptional or justifiable factors which require special consideration such as in this case? Not surprisingly, the Court, using its sound discretion, previously imposed fines or less stringent penalties upon respondents in administrative cases who were found guilty even if they already retired or passed away while their cases were still pending.

Relevantly, the said *Gonzales* case cited *Sexton v. Casida*⁸ “where the respondent, who in the meantime died, was found guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined Five Thousand Pesos (₱5,000.00), deductible from his terminal leave pay.”

In *Agarao v. Parentela, Jr.*,⁹ Judge Parentela was found guilty of immorality, a serious offense penalized with dismissal from the service and forfeiture of all or part of the benefits as the Court may determine. However, since the respondent judge passed away before a decision on his case was rendered, the Court instead forfeited one half of all of his retirement benefits excluding his accrued leave credits.

In *Kaw v. Judge Osorio*,¹⁰ while the Court held that the respondent judge may not necessarily be held liable for extortion and graft and corruption as it was not substantially proven, he was instead found accountable for violating Canons 2 and 5 of the Code of Judicial Conduct. As a consequence,

⁶ That amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion; *Office of the Court Administrator v. Yu*, 807 Phil. 277, 293 (2017).

⁷ *Gonzales v. Escalona*, supra note 3 at 465.

⁸ 508 Phil. 166 (2005), as cited in *Gonzales v. Escalona*, supra note 3 at 465.

⁹ 421 Phil. 677 (2001).

¹⁰ 469 Phil. 896 (2004).

a fine in the amount of PhP 40,000.00 was ordered to be deducted from his retirement benefits given that he mandatorily retired before the penalty of dismissal or suspension could be imposed upon him.

In *San Buenaventura v. Migriño*,¹¹ the respondent was found guilty of simple neglect of duty. The Executive Judge who investigated the case recommended that a penalty of fine equivalent to two months' salary should be imposed. After receipt of the said recommendation, the OCA modified and reduced the penalty to a fine equivalent to one-month salary for humanitarian consideration and by reason of the death of the respondent, then submitted it to the Court for final determination. Subsequently, the Court adopted the recommendation of the OCA to just impose a fine.

In *Re: Evaluation of Administrative Liability of Judge Lubao*,¹² Judge Lubao was only fined given that he has already retired. This is considering that he committed numerous serious, less serious, and light offenses¹³ while he was still in the service which would have merited the penalty of dismissal and forfeiture of all his benefits. Thence, if Judge Lubao, who admittedly committed more offenses than Judge Abul and yet previously received his retirement benefits¹⁴ in spite of his infractions, was only fined, then a similar concession should be extended to Judge Abul, especially since he was murdered while in service and while his administrative case was still pending.

As one can infer from the aforementioned cases, in spite of the death or retirement of the respondents while their respective administrative cases were still pending, only a fine or deduction from their benefits was eventually imposed upon each of them. Notably, their retirement or survivorship benefits were not all automatically forfeited. In light of this, it is clear that the Court can exercise its sound discretion in the imposition of penalties depending on the circumstances surrounding the case.

On the third ground

It should be emphasized that according to the *ponencia*, Judge Abul should be stripped of his retirement benefits even if he passed away around two years before the decision in his administrative case was released. This is in addition to the fact that he was actually murdered mere days after he turned 68 years old.¹⁵ Moreover, he would have turned 70 years old this year (2019), the compulsory age for retirement for judges,¹⁶ if not for his untimely demise.

¹¹ Supra note 4.

¹² 785 Phil. 14 (2016).

¹³ Judge Lubao was found guilty of the following offenses: gross misconduct; violation of Supreme Court rules, directives and circulars; undue delay in rendering a decision or order; and undue delay in the submission of monthly reports.

¹⁴ Except for an amount of PhP 100,000.00 withheld by the Court from his benefits which served as security until a final judgment in his case was rendered.

¹⁵ Judge Abul's birthday was on August 1, 1949.

¹⁶ Republic Act No. 9946, An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending For the Purpose Republic Act No. 910, As Amended, Providing Funds Therefor and For Other Purposes (2009).

Considering these circumstances, it is my opinion that all of Judge Abul's death and retirement benefits should not be forfeited because his death preceded the release of a judgment concerning his administrative case. More importantly, I believe that for humanitarian reasons,¹⁷ Judge Abul's death and survivorship benefits should be released.

Even if the general rule is that the death of the respondent does not preclude a finding of administrative liability,¹⁸ there are instances wherein such death necessitates the dismissal of the administrative case. According to *Gonzales v. Espinosa*,¹⁹ the recognized exceptions are anchored on the following factors: "*first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed."²⁰ I believe that the second exception pertaining to humanitarian reasons should be applied in this case. Thus, if the case will not be dismissed, then at least the death and survivorship benefits should not all be forfeited.

Relevantly, in a few cases, the Court mitigated the penalties of the respondents in view of humanitarian considerations.

In *Geocadin v. Peña*,²¹ Judge Peña was adjudged guilty of grave misconduct. However, since he was overcome by serious illnesses, he was not able to present his evidence during the investigation. The Court noted that there is a presumption of innocence in his favor and that due to his unfortunate condition, he deserved compassion and humanitarian consideration. Hence, the Court imposed a penalty of reprimand and forfeiture of three months' salary to be deducted from his retirement benefits.

In *Re: Financial Audit on the Accountabilities of Restituto Tabucon, Jr.*,²² the respondent, Tabucon, failed to remit Judiciary Development Fund (JDF) collections for a time because he purportedly used the funds to feed his family. He eventually restituted the said amounts after he borrowed money with interest from a friend. The Court ruled that his failure to remit the cash deposited to him on time constituted gross dishonesty, if not malversation. Yet, since dismissal from the service is no longer possible given that Tabucon has compulsorily retired from service, the Court held that forfeiture of all his retirement and other benefits may be too harsh under the circumstances. Since

¹⁷ *Limliman v. Judge Ulat-Marrero*, 443 Phil. 732, 736 (2003).

¹⁸ *Gonzales v. Escalona*, supra note 3, citing *Loyao, Jr. v. Caube*, 450 Phil. 38, 47 (2003).

¹⁹ Supra note 3.

²⁰ *Gonzales v. Escalona*, supra note 3 at 463, citing *Limliman v. Judge Ulat-Marrero*, supra note 17, which cited *Loyao, Jr. v. Caube*, supra note 18; *Baikong Akang Camsa v. Rendon*, 427 Phil. 518 (2002); *Judicial Audit Report*, 397 Phil. 476 (2000); *Report on the Judicial Audit Conducted in RTC, Br. 1, Bangued, Abra*, 388 Phil. 60 (2000); *Apiag v. Cantero*, 335 Phil. 511 (1997); *Mañozca v. Domagas*, 318 Phil. 744 (1995); and *Hermosa v. Paraiso*, 159 Phil. 417 (1975).

²¹ 195 Phil. 344 (1981).

²² 504 Phil. 512 (2005).

he restituted his shortages, a fine in the amount of PhP 10,000.00 was imposed upon Tabucon instead.

According to *Liwanag v. Lustre*,²³ the Court found substantial evidence showing that the respondent judge sexually molested the complainant which constitutes gross misconduct. While the OCA recommended that he should be dismissed from service and that all his retirement benefits be forfeited, the Court modified the penalty by imposing a fine on his retirement benefits because he already retired from service. It further stated that the OCA's recommendation to forfeit all of the judge's retirement benefits, "while directed at respondent, might adversely affect innocent members of his family, who are dependent on him and his retirement gratuity."²⁴ Hence, the Court deemed it best to impose a PhP 40,000.00 fine taking into account the attendant circumstances.

In this case, notably, Judge Abul's wife, Bernadita C. Abul, who also sustained gunshot wounds but survived, wrote the Court a letter dated September 13, 2017.²⁵ She explains that she is a housewife who has no work and other source of income and that ever since Judge Abul's preventive suspension from office, their family faced financial crisis. She therefore implores from the Court to release the accrued leave benefits of Judge Abul as well as other benefits or assistance which the Court could extend to them in order to help their family sustain their daily needs and to fund her son's education in medical school.

Given the specific circumstances of Judge Abul's case, it is my view that his mistakes should not unduly punish his spouse or his heirs, especially if they had no hand in or knowledge about the alleged extortions. Judge Abul's liability should be considered personal and extinguished by reason of his death, and should not extend beyond the said death only to be shouldered by his spouse or his son. Doing so would indirectly impose a harsh penalty upon innocent individuals who not only have to come to terms with the unjust death of a loved one but also live without one henceforth. Without a doubt, forfeiture of all of Judge Abul's death and survivorship benefits would add to the grief and hardships that his family is already enduring. Thus, it is my humble position that assuming that the Court would maintain the non-dismissal rule in administrative cases in case of death of the respondent, the Court should, instead of imposing such a strict and unforgiving punishment even when Judge Abul has already passed away, impose a fine to be deducted from his retirement benefits. This is what the OCA had in fact recommended in the first place.

²³ 365 Phil. 496 (1999).

²⁴ *Id.* at 510.

²⁵ *Rollo*, p. 91.

Pertinent to the death of a member of the Judiciary while still in actual service, Sections 2 to 3-A of Republic Act (R.A.) No. 9946²⁶ state that:

SEC. 2. In case a Justice of the Supreme Court or Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established, dies while in actual service, regardless of his/her age and length of service as required in Section 1 hereof, his/her heirs shall receive a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance received by him/her as such Justice or Judge: *Provided, however,* That where the deceased Justice or Judge has rendered at least fifteen (15) years either in the Judiciary or in any other branch of Government, or both, his/her heirs shall instead be entitled to a lump sum of ten (10) years gratuity computed on the same basis as indicated in this provision: *Provided, further,* That the lump sum of ten (10) years gratuity shall be received by the heirs of the Justice or the Judge who was killed because of his/her work as such: *Provided,* That the Justice or Judge has served in Government for at least five (5) years regardless of age at the time of death. When a Justice or Judge is killed intentionally while in service, the presumption is that the death is work-related.

SEC. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years, to further annuity payable monthly during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, however,* That if the reason for the retirement be any permanent disability contracted during his/her incumbency in office and prior to the date of retirement, he/she shall receive a gratuity equivalent to ten (10) years' salary and the allowances aforementioned: *Provided, further,* That should the retirement under Section 1(a) hereof be with the attendance of any partial permanent disability contracted during his/her incumbency and prior to the date of retirement, he/she shall receive an additional gratuity equivalent to two (2) years lump sum that he/she is entitled to under this Act: *Provided, furthermore,* That if he/she survives after ten (10) years or seven (7) years, as the case may be, he/she shall continue to receive a monthly annuity as computed under this Act during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, finally,* That those who have retired with the attendance of any partial permanent disability five (5) years prior to the effectivity of this Act shall be entitled to the same benefits provided herein.

²⁶ Republic Act No. 9946, An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending For the Purpose Republic Act No. 910, As Amended, Providing Funds Therefor and For Other Purposes (2009).

Upon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

SEC. 3-A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.

In line with this, according to A.M. No. 17-08-01-SC, in case of permanent disability due to death while in actual service, a judge is entitled to the following benefits:

B.1 Where government service is at least 15 years, regardless of age –

- (1) Lump sum gratuity of 10 years, to be received by the heirs (*Section 2*)
- (2) Full survivorship pension benefits (*Section 1*), to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);
- (3) Automatic increase of pension benefits (*Section 3-A*).

Provided, The same benefits shall apply in respect to a justice or judge who, with at least 5 years of government service, was killed due to his/her work as such.

B.2 Where government service is less than 15 years, regardless of age –

- (1) Lump sum gratuity of 5 years, to be received by the heirs (*Section 2*)
- (2) Pro-rated pension benefits (*Section 1*), to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);
- (3) Automatic increase of pension benefits (*Section 3-A*).²⁷

E. Survivorship Pension Benefits

The legitimate surviving spouse of a Justice or Judge who (1) has retired or was eligible to retire optionally at the time of death, and (2) was receiving or would have been entitled to receive a monthly pension, shall be entitled to receive the said benefits that the deceased Justice or Judge would have received had the Justice or Judge not died, ***Provided***, That the justice or judge who, regardless of age, died or was killed while in actual service shall be considered as retired due to permanent disability. ***Provided***, further, That the survivorship benefit shall be pro-rated if the deceased justice or judge had rendered government service for

²⁷ See Republic Act No. 9946.

less than 15 years. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.²⁸

In light of these, it is my view that Judge Abul's spouse and son (or heirs) should be given the death benefits granted under Section 2 of R.A. No. 9946. If Judge Abul served for at least 15 years, his heirs should receive a lump sum equivalent to ten (10) years. Alternatively, if he served for less than 15 years, the lump sum should be equivalent to five (5) years. Subsequently, after the gratuity period of ten (10) years has passed, his heirs are entitled to survivorship benefits, specifically, full monthly pension (if Judge Abul rendered at least 15 years of service) or pro-rated monthly pension (if he served for less than 15 years).

In conclusion, it is my position that: 1) Judge Abul's death extinguished any administrative penalty that may be imposed upon him and that the administrative complaint against him should be dismissed in accordance with the Constitutional principle that every accused is presumed innocent until proven guilty by the requisite quantum of proof; and 2) assuming the administrative complaint survives his demise, the spouse and son (or heirs) of Judge Abul should be granted the death benefits and survivorship pension benefits due to his death while in actual service, considering that no ruling was handed down prior to his death and no penalty yet has been imposed upon him before the said death and due to humanitarian considerations unique to his case.

Lastly, may I point out to my esteemed Brethren that this Court has been forgiving in the past when it gave due course to petitions for clemency of dismissed judges. Unlike those magistrates who were recipients of the Court's benevolent attitude, Judge Abul will never be able to file a petition for clemency simply because he has passed on to the Great Beyond. The least that can be extended to his heirs to tide them over in the aftermath of his death is some concrete form of pecuniary security.

I therefore vote to DISMISS the instant administrative complaint against the late Judge Godofredo B. Abul, Jr.


RAMON PAUL L. HERNANDO
Associate Justice

²⁸ Re: Requests for Survivorship Pension Benefits of Spouses of Justices and Judges Who Died Prior to the Effectivity of Republic Act No. 9946, A.M. No. 17-08-01-SC, September 19, 2017.