

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 177

REPRIMANDING CITY FISCAL LIMPI MACAPUNDAG OF MARAWI CITY,

This is an administrative proceeding instituted by Councilors Hadji Mama Racman Datusamarawi and Hadji Ismael Barodi against City Fiscal Limpi Macapundag of Marawi City for alleged partiality, dereliction and gross irregularities in the performance of his duties. The charges were investigated by Fiscal Luis A. Atanacio of the Department of Justice.

It is alleged that (1) respondent deliberately refused and/or failed to prosecute the arson case involving the burning of the Provincial Capitol Building of Lanao del Sur notwithstanding his knowledge of the identity of the culprits because he "listened to unscrupulous politicians from whom he owed his appointment as fiscal"; (2) he failed to prosecute PC Captain Carlos Lademora and his soldiers who, under the influence of liquor, indiscriminately fired their guns and even maltreated innocent persons; (3) he refused to prosecute a criminal case for violation of Ordinance No. 657 of Marawi City for the reason that the accused were Liberal Party men; (4) he abused his office by "pressuring the complainants into supporting the administration of then City Mayor Macapado Batara"; and (5) he was politically motivated in prosecuting Councilor Barodi for building a residential house without a permit.

Respondent denied the charges in a written answer thereto and in the formal investigation he explained in detail his actuations.

The records show that the arson case was dropped after a preliminary investigation conducted by respondent and Provincial Fiscal Luis D. Manta of Lanao del Sur because immediately after the burning of the capitol building the only material witness, one Gaguil Didao, declared that he did not know who the culprits were, while in later investigations conducted by NBI and CIS agents he implicated different persons in three conflicting statements. In view of the glaring inconsistencies in Didao's

testimony, the same may be considered unworthy of credence, for a testimony to be given credit it is necessary that it be not incompatible with other declarations of the same witness on previous occasions regarding the same matter. On the basis of the evidence adduced, therefore, no prima facie case was established against the supposed culprits.

As regards the second charge, it appears that PC Captain Carlos Lademora and eight (8) soldiers were tried jointly in Criminal Cases No. 2571 (for illegal discharge of firearms), No. 2572 (for multiple slight physical injuries) and No. 2573 (for violation of City Ordinance No. 640 [drunkenness]). After presenting two witnesses, namely, Police Lt. Macandar Anango and Patrolman Mosacala Manta, respondent filed a motion to dismiss the cases insofar as Capt. Lademora was concerned on the ground that the declarations of the two witnesses were weak and contradictory, and that the other prosecution witnesses, Kunag Mamao, Tangorac O. Langco and Lasican Datu, had turned hostile and signed affidavits of desistance. Finding the motion well-founded, the City Judge in an order dated March 28, 1967, dismissed said cases accordingly.

Thereafter, or on April 28, 1967, respondent filed another motion to dismiss the cases against the soldiers for failure of the witnesses to appear in the hearing for the third time despite due notice given them. The court had previously warned the witnesses that the cases would be dismissed if they failed to appear in the next hearing. Another reason advanced in the motion was that Lasican Datu, the only witness present that morning and who was one of the offended parties in Criminal Case No. 2572 for physical injuries, had taken the witness stand and declared that he was no longer interested in the further prosecution of the cases. The court dismissed the cases against the enlisted men on the same day (April 28, 1967).

The only question to determine is whether respondent was partial to Capt. Lademora in filing the motion to dismiss the aforesaid criminal cases after the testimony of Lt. Anango and Patrolman Manta.

The records disclose that (1) Capt. Lademora had nothing to do with the case of physical injuries (Criminal Case No. 2572); (2) in the case of illegal discharge of firearms (Criminal Case

No. 2571) Patrolman Manta declared that the "soldiers fired" but could not identify any soldier who fired his gun, while Lt. Anango said he "saw Capt. Lademora fire and then he commanded his men to fire which they obeyed"; (3) in Criminal Case No. 2573 for violation of City Ordinance No. 640 (drunkenness), Patrolman Manta declared that he saw Capt. Lademora and eight (8) soldiers (whom he named in an affidavit) drinking in a restaurant, while Lt. Anango said he knew Capt. Lademora was drunk because when he entered the checkpoint the captain "smelled of liquor and could hardly pronounce his words."

Patrolman Manta's credibility is open to serious doubt due to several important contradictions. First, in his affidavit of February 8, 1967, he stated having seen Capt. Lademora and eight soldiers, whom he named, drinking. However, in the investigation of March 17, 1967, before Acting City Judge Mangontawar B. Guro of Marawi he named only three and admitted not knowing the others. Second, in the same affidavit he said Patrolman Tambos Goling brought to the checkpoint Pacabungang Saripada who was being chased by the soldiers, while in his testimony he said Goling brought in Lasican Datu and not Pacabungang Saripada. Third, in said affidavit he declared that the company commander Capt. Arque and Capt. Lademora went out of the checkpoint together, moved with the soldiers to the direction of the bridge and when the soldiers reached a place in front of Station DXRM "they fired several firings." In the same investigation of March 17, 1967, said witness testified that while Capt. Lademora was inside the checkpoint, Capt. Arque left and boarded a jeep, after which Capt. Lademora called the soldiers, walked towards the bridge and then fired their guns.

Lt. Anango's statement is likewise unreliable. He concluded that Capt. Lademora was drunk because he was allegedly smelling of liquor and that he could hardly pronounce his words. Drunkenness is subjective. It means the condition following the taking of liquor in excessive quantities. It connotes the effect produced upon the mind and body that a person is deprived of the normal control of his bodily and mental faculties. No evidence was presented that said soldiers were at the time deprived of ~~the~~ the normal control of their bodily and mental faculties as a result of excessive drinking of intoxicants. As to his statement that Capt. Lademora gave the order to the soldiers to fire and that they fired in the air in all directions, it should be noted that Capt. Arque (the company commander) was in the group and was

the superior officer of Capt. Lademora. Consequently, if orders had to be made they should have been given by the ranking officer. At this juncture, government witnesses who signed affidavits of desistance said they "learned that Capt. Lademora and Capt. Arque fired their guns in the air to prevent their soldiers who were drunk from doing more harm."

With this kind of evidence, respondent fiscal really had very little to stand on. Considering that the complaints did not include Capt. Arque and Lt. Alug, a Muslim, even if they were with the group, one is tempted to believe that the charges were aimed at getting Capt. Lademora who is said to be a henchman of complainants' political enemies, the then Mayor Batara and Congressman Lucman. By and large, I am satisfied that the respondent did not abuse his discretion in filing the two (2) motions to dismiss.

On the third charge, it appears that the counsel for the two (2) accused in Criminal Case No. 2634 for alleged violation of City Ordinance No. 657 of Marawi prohibiting the construction before December 1967 of market stalls in the burned-down bi-weekly city market petitioned the court for reinvestigation thereof contending that his clients were not given the opportunity to present evidence and that there was discrimination in not charging a hundred others who had made similar constructions. The court granted the petition and respondent conducted the reinvestigation after which he filed a motion to dismiss the case provisionally with the intention of including the other violators. The motion was, however, denied and the trial went on with the city special counsel continuing with the prosecution of the case. Upon conviction, the accused appealed to the Court of First Instance of Lanao del Sur which subsequently dismissed the case for "failure to prosecute." It appears that the special counsel and the witnesses had lost interest in the case, for Mayor Batara, who was supported by the accused, lost in the mayoralty race. In the face of these facts, complainants' allegation of partiality on the part of the respondent in moving for the provisional dismissal of the criminal case is unfounded.

The fourth charge hinges on the veracity of the averment of complainant Councilor Barodi that respondent was willing to drop the case against him for constructing his residence without the corresponding permit provided Mayor Batara agreed thereto and that, for this purpose, respondent brought him (Barodi) and the other complainant (Racman) to Iligan City to meet the Mayor. There is grave doubt on the truthfulness of this allegation. The other complainant, Councilor Racman, declared during the

investigation that he did not hear any mention of complainant Barodi's case during the conference. On the other hand, it was established that the meeting was initiated and arranged by City Assessor Hadji Salik, who is said to be a cousin of Councilor Racman, a cousin-in-law of Councilor Barodi and a "bilas" of ex-Mayor Batara, apparently for the purpose of bringing his relatives to work together for the good of Marawi City. It seems that the two councilors were against Mayor Batara's proposal to secure a certain loan very much bigger than what the city council was willing to approve. If the desired peace and resulting cooperation failed to materialize, it was due to complainants' refusal to make a definite decision on the matter in the absence of a certain councilor and the Vice-Mayor of the city with whom they had formed a bloc in the council.

However, while this charge is unsubstantiated, it is not denied that respondent brought the complainants in his car to the conference with Mayor Batara in Iligan City. During the investigation, he even admitted having admonished them to cooperate with one another by explaining that he saw nothing wrong in helping the mayor and the councilors come to an understanding to work together in the interest of the city whose problems had not been solved because of their bickerings, as in the case of delayed payment of the salaries of employees due to lack of funds.

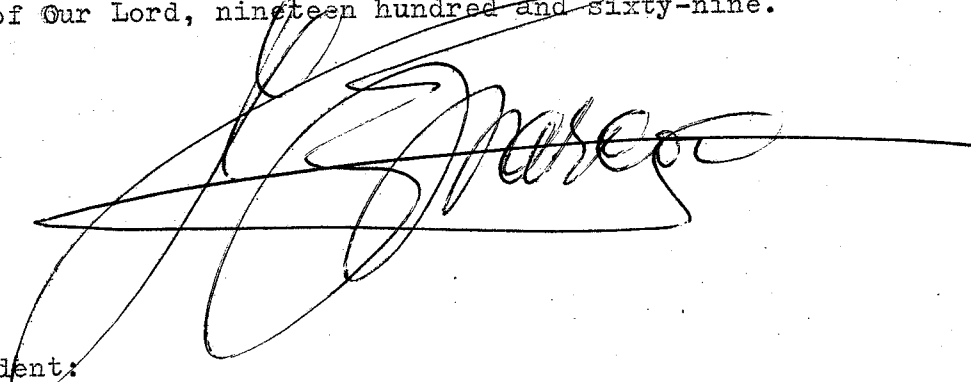
Respondent's actuation in taking Councilor Barodi in his car and bringing him to Mayor Batara in Iligan City at a time when said councilor had a pending case was improper and indiscreet because it exposed him to the suspicion that he was being used as a tool of Mayor Batara to induce Councilor Barodi into supporting him in his reelection bid, a suspicion which, although perhaps not true, tended to affect his integrity and the impartiality of his office. On this score, respondent is guilty of indiscretion.

The fifth and last charge that respondent was politically motivated in filing a charge against Councilor Barodi for constructing a residential house without permit is devoid of merit, it appearing that the complaint was based on the sworn statements of Police Lieutenants Badacar Anango and Armi Ambul.

I find the evidence insufficient to support the charges against respondent, except the fourth charge where he is guilty of indiscretion.

In view of all the foregoing, and upon the recommendation of the Secretary of Justice, City Fiscal Limpi Macapundag of Marawi is hereby reprimanded and warned to be more circumspect in his acts, as a repetition of the same or similar acts will be dealt with more severely. It appearing that respondent has been under preventive suspension since April 24, 1968, the same is hereby lifted and he shall be reinstated forthwith, with right to receive salary corresponding to the period of his preventive suspension.

Done in the City of Manila, this 18th of July, in the year of Our Lord, nineteen hundred and sixty-nine.



By the President:



RAFAEL M. SALAS
Executive Secretary