

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 209

**IMPOSING THE PENALTY OF SIX (6) MONTHS SUSPENSION FROM
THE SERVICE WITHOUT PAY ON SECOND ASSISTANT CITY
PROSECUTOR VICTORINO S. ALVARO OF MANILA**

This refers to the administrative complaint filed *motu proprio* by the Department of Justice against Manila Second Assistant City Prosecutor Victorino S. Alvaro for grave misconduct and conduct prejudicial to the best interest of the service.

Records disclose that on December 22, 1992, Prosecutor Alvaro, in his capacity as Assistant Chief of the Inquest Division, approved the resolution of the inquest prosecutor finding a *prima facie* case of murder without bail against Braulio Miano, the mastermind; Cecilio Gaddi, the knifewielder; and Ledencio Buenafe, the courier, in the killing of Gelita Sarayan. Gaddi and Buenafe executed extra-judicial confessions, with the assistance of counsel, alleging that Miano instructed them to execute the killing.

On December 23, 1992, Prosecutor Alvaro modified said resolution by issuing a second resolution which he dictated to stenographer Josefina Yambao, finding Gaddi and Buenafe liable for murder and downgrading the charge against Miano to homicide. Special Counsel Zenaida Laguilles refused to sign the informations for murder and homicide as she noticed the existence of conspiracy among the three (3) suspects which warranted the filing of a common charge of murder. Special Counsel Venepi Canta likewise refused to sign the informations as he found it erroneous to charge a principal by induction with mere homicide when his co-accused was being charged with murder. The informations were finally signed by Prosecutor Alvaro directing the filing of separate informations for murder and homicide. The said informations were approved by Prosecutor Alvaro and filed in court.

The following day, December 24, 1992, Miano was released from detention upon posting the recommended bail of P20,000.00. He was arraigned by the court for homicide on January 11, 1993.

Consequently, Prosecutor Alvaro was held to answer for downgrading the charge as well as signing and approving the defective information for homicide against Miano who was cited therein as the knifewielder when he was the principal by induction. In view of the defect

IN REPLYING, PLEASE CITE:

PFVR Letter # L950828



L950828

du

in the information which could lead to the dismissal of the case, and as the charge could no longer be raised to murder, Miano having been arraigned, the City Prosecutor, as a remedial measure, moved for the amendment of the information to include the participation of Gaddi and Buenafe.

Prosecutor Alvaro denies having issued a resolution downgrading the charge against Miano and having directed the preparation of the two (2) informations for murder and homicide. He claims that what he prepared was a short memo urging the prosecutor assigned to file the information to further evaluate the evidence on record in the light of the doctrine of *res inter alios acta* since he entertained doubts as to whether the three (3) suspects should be indicted for murder in the absence of an independent evidence of conspiracy. He avers that his approval of the two (2) informations was an honest mistake as he presumed that Prosecutor Diccion had examined carefully their contents.

The recommendation of the Secretary of Justice to suspend Prosecutor Alvaro from the service for six (6) months without pay is anchored on the findings after a formal investigation that Prosecutor Alvaro deliberately downgraded the charge against Miano without the required approval of the Chief of the Inquest Division, which is an office procedure, and that he knowingly signed or approved the defective information for homicide against Miano. Prosecutor Alvaro, by giving instructions to file separate informations for homicide and murder, flagrantly ignored the basic principle in criminal law and procedure that when two (2) or more persons are found liable for murder or homicide, in conspiracy with one another as principals, they should all be indicted in the same criminal information for the same charge. Prosecutor Alvaro's deliberate and irregular acts have resulted to the failure of the prosecution to prosecute Miano for murder as he had already been arraigned for homicide as well as Gaddi, the knifewielder, who had been included in the amended information for homicide.

We concur with the findings of the Secretary of Justice.

That Prosecutor Alvaro deliberately downgraded the charge against Miano has been sufficiently established by the testimonies of witnesses against him. His defense that his approval of the informations for murder and homicide was an honest mistake is indeed incredible, he being an experienced prosecutor.

WHEREFORE, premises considered, respondent Victorino S. Alvaro, Second Assistant City Prosecutor of Manila, is hereby found guilty as charged. Accordingly, he is hereby suspended from the service

for six (6) months, without pay, effective fifteen (15) days after his receipt of the copy of this order.

Done in the City of Manila this 2nd day of August, in the year of Our Lord, nineteen hundred and ninety five.

A large, stylized handwritten signature in black ink, appearing to be 'R. Torres'.

By the President:

A smaller handwritten signature in black ink, appearing to be 'R. Torres'.

RUBEN D. TORRES
Executive Secretary