

DILAN, Honorio V.
Re Appeal; Conviction of a Crime
Involving Moral Turpitude

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RESOLUTION NO. 020893

Honorio V. Dilan, former Driver, Regional Equipment Services, Department of Public Works and Highways-Cordillera Administrative Region (DPWH-CAR), appeals from the August 9, 2000 decision of the Civil Service Commission (CSC)-CAR, dismissing his motion for reconsideration of its earlier decision, Decision No. CAR-00-299 dated June 28, 2000, adjudging him guilty of the administrative offense of Conviction of a Crime Involving Moral Turpitude and imposing upon him the penalty of dismissal from the service.

Dilan, in his appeal, ascribes two principal errors committed by the office *a quo* in finding adversely against him:

"1- With all due respect, the Regional Director erred in not giving consideration to the application for probation granted to respondent so that by being accorded the benefit of the Probation Law, his conviction has not yet become final; and

"2- With all due respect, the Regional Director erred in not considering that the complaint filed against respondent was a form of harassment for him to submit to the whims and caprices of the complainant. Moreover, the penalty meted is too harsh."

As regards his first assignment of error, Dilan contends that while he was, indeed, convicted by a trial court, he subsequently applied for probation, which was favorably given due course. This, he asseverates, has the effect of suspending his sentence for the duration of the probation, which, in his case, was for two (2) years. Consequently, his conviction could not be said to have ripened into finality. He invokes as his authority in support thereto the leading case of **Florentina L. Baclayon vs. Hon. Pacito G. Mutia (129 SCRA 148)**, which espouses that:

"An order placing defendant on 'probation' is not a sentence but is rather in effect a suspension of the imposition of sentence. It is not a final judgment but is rather an 'interlocutory judgment' in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be allowed by a final judgment of sentence of the conditions are violated."

Anent the other assignment of error, it is his contention that the case against him, which he purports to have been maliciously instigated by his estranged wife, was meant to vex and harass him into submitting to the latter's demand that part of their properties, particularly the house, be conveyed to her. He avers that there was actually an offer by his wife to withdraw the charges on certain conditions but he refused to accede to these, *"as the conditions were very, very unreasonable and in fact contrary to public policy."*

He then pleads for mercy and understanding, noting that he has served the government *"for twenty-five (25) long years with the highest degree of efficiency and effectiveness,"* the fruit of which would be gone for naught if the decisions are maintained, and in fact, he avers he is now suffering unjustly from said decisions with his purported unceremonious dismissal by the DPWH-CAR. He implores that he be cleared or in the alternative, the penalty imposed on him be reduced.

It appears on the records of the case that earlier on, Dilan's wife, Estelita S. Dilan, instituted a criminal complaint against her husband and a certain Erlinda del Mundo for concubinage, stemming from the alleged extramarital liaison between Dilan and del Mundo, which illicit relationship begot three children. While the criminal case was being litigated, she charged Dilan anew, this time administratively, before the CSC-CAR. Shortly thereafter, the court handed down its decision in the criminal case, which decision pronounced Dilan guilty of the crime imputed and sentenced him to two years of *prision correccional*. Owing to this development, the CSC-CAR found a *prima facie* case against Dilan for the administrative offense of Conviction of a Crime Involving Moral Turpitude. A formal charge was thereby issued. Dilan, in the meantime, applied for probation, which the court favorably considered. He then interposed the said order of probation to move for the dismissal of the administrative case, arguing that the same had suspended his sentence and therefore, his conviction had not yet become final. The CSC-CAR saw it differently, however, and promulgated Decision No. CAR-00-299, the material excerpts of which, including the decretal portion, are quoted below:

"Stripped to their essentials, the representations of both parties vis-a-vis the record of the case point to these issues, to wit:

- *Whether or not the Order of Probation granted to Honorio V. Dilan rendered his conviction for Concubinage final.*
- *Conversely, whether or not there exists substantial evidence to find him guilty of the offense of Conviction of a Crime Involving Moral Turpitude.*

"Records bear that upon the promulgation of the judgment in the criminal case against him, Dilan applied for probation. Pending the resolution of an application for probation, the judgment of conviction is not yet executory. However, with the application and the eventual issuance of an order granting his probation, Dilan's conviction for Concubinage has become final. The crime for which the regular court found Dilan guilty of is concubinage. It is a crime involving moral turpitude.

"In the case of Manuel Basa vs. The Honorable Judge Antonio M. Martinez, 181 SCRA 459, the

Supreme Court substantially ruled that an appeal and an application for probation are alternative remedies. x x x

x x x

"Prescinding therefrom, a judgment of conviction becomes final (a) when no appeal is seasonably filed, (b) when the accused commences to serve the sentence, (c) when the right to appeal is expressly waived in writing, except where the death penalty was imposed by the trial court, and (d) when the accused applies for probation, thereby waiving his right to appeal (People vs. Salle, Jr., 250 SCRA 581). Thus, having applied for and was actually granted probation, the decision of the regular court finding Dilan guilty of the crime of Concubinage has become final and executory.

x x x

"Clearly, Dilan's conviction in the criminal case has become final.

x x x

"Moral turpitude, on the other hand, is defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man or conduct contrary to justice, modesty, or good morals (Tak Ng vs. Republic, 106 Phil. 727). Necessarily the crime of Concubinage is a crime involving moral turpitude. The cohabitation and illicit relation of Dilan with his paramour is definitely contrary to good morals.

x x x

"WHEREFORE, Honorio V. Dilan is hereby found guilty of Conviction of a Crime Involving Moral Turpitude and meted out the penalty of dismissal from the service with the accessory penalty of perpetual disqualification from re-entering the government service in the future. In view of his twenty-five (25) years in the government service, the accessory penalty of forfeiture of retirement benefits is not imposed as substantial justice has been duly served with his dismissal from the service."

Aggrieved by the decision, he moved for a reconsideration but, as intimated earlier, the same was rebuffed. Hence, this appeal.

The Commission finds no cogent reason to depart from the decisions of the office *a quo* since these are borne out by the evidence on records and pertinent caselaw.

The administrative offense Dilan stood charged with and held liable below is Conviction of a Crime Involving Moral Turpitude. Briefly, the offense springs from a guilty verdict entered against a public officer or employee for a crime involving

moral turpitude. In more specific terms, two indispensable elements make up the administrative offense in question:

1. conviction of a crime; and
2. such crime must involve moral turpitude.

With respect to the first requisite, it is not enough that for one to be held liable under the offense, there must be a criminal conviction. What is required is a final determination of guilt or a judgment of conviction that is final.

On the other hand, the second element relating to "*a crime involving moral turpitude*" imports that the felonious act is "*something immoral in itself regardless of the fact that it is punishable by law or not. It must not merely be mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude.*" (**Zari vs. Flores, 94 SCRA 323; and Court Administrator vs. San Andres, 197 SCRA 168**)

It is the concurrence of the foregoing conditions that gives rise to the existence of the administrative offense ascribed to Dilan.

In the case at bar, Dilan was adjudged guilty of the crime of Concubinage before a municipal trial court. There is no showing that he appealed from the adverse judgment. What is rather evident from the records before the Commission is that following the rendition of the decision in the criminal case, he thereupon applied for and was granted a two-year probation. With this factual backdrop in mind, can it be said that Dilan's conviction has attained finality? Put another way, did his application for and subsequent grant of probation cause the judgment of conviction to become final?

The Commission believes and so holds that the grant of probation had the resultant effect of making the judgment of conviction against Dilan final and conclusive. This proceeds from the fact that probation is a remedy alternative to the right to appeal. An accused either appeals or applies for probation. He cannot have recourse to both at the same time, or, figuratively speaking, he cannot have his cake and eat it, too. If he appeals, he opens the whole case for review, in which case, there is no finality of judgment yet. However, if instead he applies for probation, he necessarily waives his right to appeal, and in the process, he accedes or conforms unreservedly to the propriety of the judgment. So held the Court in the case of **Palo vs. Militante, 184 SCRA 395**:

"The filing of the application for probation operates as a waiver of the right to appeal. Thus, there is no more opportunity for the accused to exercise his right to appeal much less to withdraw a supposed improvident plea of not guilty, the judgment having become final by the filing of the application for probation." (underscoring supplied)

Thus, when Dilan opted not to pursue his appeal but rather worked for his probation, which effort was met with success, he dispensed with his right to question his conviction on appeal, and thus, the court's decision *ipso facto* culminated or lapsed into finality.

His invocation of the Baclayon case to bolster his theory is misplaced. The disquisition therein has no material bearing to his case. The pronouncement of the Court therein addresses itself only to the suspension of the imposition of the sentence. It does not, in any way, make reference to the judgment of conviction. It bears stressing that the imposition of sentence or penalty and the judgment of conviction are two distinct and separate things. Hence, when the Baclayon case declares the temporary stay of the penalty in the event of the grant of probation, the underlying presumption there is that the criminal conviction has set in conclusively and with finality. For, if this were not the case, then there would be no sentence to restrain or suspend. The imposition of sentence, it should be noted, generally presupposes the existence of a final and executory judgment. Withal, only when there is a decision final in character can there be the occasion for actual service of sentence.

In fact, a closer reading of the Baclayon case relied upon, rather than strengthen Dilan's case, only demonstrates that he is groping at straws, so to speak. It is well to recall that in the holding of the Court therein, it is stated that "*(probation) is not a final judgment but is rather an 'interlocutory judgment' in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of sentence if the conditions are violated.*" In saying that a "*final judgment of sentence*" shall ensue upon a violation of any of the terms or conditions prescribed for the probation, the Court is merely alluding to the effect of a probation order as set forth under **Section 11 of Presidential Decree No. 968**, or the **Probation Law**, as amended, to wit:

"Section 11. Effectivity of Probation Order.-- A probation order shall take effect upon its issuance, at which time the court shall inform the offender of the consequences thereof and explain that upon his failure to comply with any of the conditions prescribed in the said order or his commission of another offense, he shall serve the penalty imposed for the offense under which he was placed on probation." (underscoring supplied)

It is abundantly clear from the foregoing that the "final judgment of sentence" adverted to in the Baclayon case refers to the subsequent order of the court directing the accused to commence serving his sentence, which was earlier suspended because of the probation, and has no effect whatsoever on the fact of his conviction which is already final. This is the more reasonable interpretation considering the ruling of the Supreme Court in the case of **Office of the Court Administrator vs. Librado (260 SCRA 624)**, to wit:

"While indeed the purpose of the Probation Law (P.D. No. 968, as amended) is to save valuable human material, it must not be forgotten that unlike pardon, probation does not obliterate the crime of which the person under probation has been convicted. The reform and rehabilitation of the probationer cannot justify his retention in the government service. He may seek to reenter government service, but only after he has shown that he is fit to serve once again." (underscoring supplied)

Thus, if probation does not erase the crime, then necessarily the conviction subsists. It is the sentence that is only touched, as elucidated by the case of **Bala vs. Martinez (181 SCRA 459)**:

"The probation having been revoked, it is imperative that the probationer be arrested so that he can

serve the sentence originally imposed. The expiration of the probation period of one year is of no moment, there being no order of final discharge as yet, as we stressed earlier. Neither can there be a deduction of the one year probation period from the penalty of one year and one day to three years, six months, and twenty-one days of imprisonment because an order placing the defendant on 'probation' is not a 'sentence,' but is in effect a suspension of the imposition of the sentence." (underscoring supplied)

Having arrived at the determination as to the finality of Dilan's criminal conviction, it is now necessary to inquire into the other half of the equation, i.e., the one relating to the issue of moral turpitude. Does the crime of Concubinage involve moral turpitude?

A definition of moral turpitude was set forth in the earlier pages of this resolution. Moral turpitude, to restate, implies *"everything which is done contrary to justice, honesty, modesty, or good morals"* including *"acts of baseness, vileness, depravity in the private and social duties which man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man."* (**Office of the Court Administrator vs. Librado, supra.**)

Concubinage is a crime committed by a husband who generally cohabits with a woman other than her lawful wife (**Article 334, Revised Penal Code**). It is a crime penalized for its reprehensibility and odiousness to all that stands for morality and virtue. It is an offense that subverts and transgresses the very heart of the inviolable institution upon which the Philippine society is founded, and which, for its singular importance, is safeguarded by no less than the Constitution itself-- the institution of marriage. It is, in the ultimate analysis, a mockery and searing indictment of the Filipino family, which is the basic fabric of the nation.

The decision can stop there, but there is more. The very circumstances attendant to Dilan's commission of the crime of Concubinage cannot but elicit a revolting repugnance. As the records of the case show, he took advantage of his wife's absence, who was then working abroad, braving the pains of separation and solitude and risking her life and limb just to contribute her share in ensuring a bright future for their family, to engage in and maintain sexual liaisons with another woman, even to the extent of begetting illegitimate children with her. He even abdicated and defaulted on his responsibility as a loving and supportive father to his children, choosing to spend more of his precious time with his another family. Then, upon being confronted by his wife about his sexual indiscretions, he had the effrontery to deny them. All these ineluctably evinces in one's mind his callousness, moral depravity and cavalier disregard of good morals.

There is another aspect of this case that needs to be underscored. In the decision by the office *a quo*, while imposing upon Dilan the penalty of dismissal from the service, it held back from meting the concomitant accessory penalty of forfeiture of retirement benefits, appreciating in the latter's favor his long and unblemished years of government service. The Commission does not see it that way. Note that the manner by which Dilan perpetrated the crime of Concubinage, as earlier set out, betrayed or manifested the height of venality, wanton disregard and utter lack of sensitivity both for his filial obligations as well as his duties and responsibilities as a government employee. Whatever balming or mitigating effect his length of service may thus have on his liability is overridden or outweighed by the seriousness or gravity of his misconduct. At any rate, the penalty of

dismissal, given its indivisible nature, is not susceptible of mitigation as held in the case of **Ruiz, Jocelyn D. (CSC Resolution No. 98-3107, dated December 7, 1998)**, to wit:

"After a careful reevaluation of the records, the Commission finds the motion without merit. The movant failed to present new evidence that would warrant the reversal or modification of the resolution sought to be reconsidered. Moreover, movant is not questioning the factual findings in the resolution but instead she is seeking compassion from the Commission to modify or lessen the penalty of dismissal imposed upon her. In pursuit thereof, movant pleaded the fifteen (15) years of service she rendered in the government.

"The Commission, however, in Resolution No. 98-2344 (Zagado, Carmencita A., dated September 4, 1998), citing the case of PAL vs. NLRC, 198 SCRA 748, ruled that length of service cannot be taken into consideration in mitigating the penalty of dismissal." (underscoring supplied)

A similar ruling was rendered in another case:

"The Commission finds appellant's claim bereft of merit. Her thirteen (13) years in the government service can in no way mitigate her liability. Verily, it is a settled rule that the presence of a mitigating circumstance such as length of service of the appellant does not have any effect on the imposition of the penalty of dismissal." (**CSC Resolution No. 00-0180, dated January 21, 2000**) (underscoring supplied)

A public officer or employee, no matter how lowly his station in the general scheme of government, is bound by the same stringent rule on ethics and morality governing the length and breadth of the bureaucracy. His taking of an oath of office, that he renews every now and then, serves to affirm his unceasing commitment to abide by the ethos of responsibility, integrity, and honesty. If and when he falls short of his solemn obligations, and perpetrate acts contrary to the prescribed norms of conduct, the faith and public confidence reposed upon the civil service is necessarily eroded. Verily, public accountability demands that the erring official or employee be visited with condemnation and, in proper cases, commensurate sanction.

WHEREFORE, the appeal of Honorio V. Dilan is hereby **DISMISSED**. The decisions of the Civil Service Commission-Cordillera Administrative Region are affirmed with the modification that the retirement benefits of Dilan are ordered forfeited.

Quezon City, **JUN 27 2002**

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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