VENTURA V. ATTY. SAMSON

FACTS:

Complainant Maria Victoria B. Ventura filed on July 29, 2004 a Complaint for Disbarment or Suspension before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline against respondent Atty. Danilo S. Samson for "grossly immoral conduct."

In her complaint, complainant alleged that

> 2. The herein Complainant MARIA VICTORIA B. VENTURA executed a Sworn Statement dated 19 April 2002 and a Supplemental-Complaint dated 10 May 2002 stating therein that the crime of RAPE was committed against her person sometime in December, 2001 and on 19 March 2002 when she was merely thirteen (13) years of age by herein Respondent ATTY. DANILO S. SAMSON, then thirty eight (38) years old, married to Teresita B. Samson, Filipino and resident of Barangay 5, San Francisco, Agusan Del Sur, Philippines….
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> 3. In his Counter-Affidavit, herein Respondent ATTY. DANILO S. SAMSON admitted that sexual intercourse indeed transpired between the herein Complainant MARIA VICTORIA B. VENTURA and himself….
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> 8. The act/s committed by the herein Respondent Atty. Danilo S. Samson against the herein Complainant MARIA VICTORIA B. VENTURA as hereinbefore stated clearly constitute … "grossly immoral conduct" under Section 27 of Rule 138 of the Rules of Court of the Philippines which provides for a penalty of "DISBARMENT or SUSPENSION of an Attorney by the SUPREME COURT."

Respondent vehemently denies the truth of the allegations in paragraph 8 of the complaint to the effect that the acts of respondent in having sex with complainant constitute … grossly immoral conduct. The truth is that the act of respondent in having sex with complainant was done with mutual agreement after respondent gave money to complainant. Respondent respectfully submits that his act of having sex with complainant once does not constitute… grossly immoral conduct.

There is no human law that punishes a person who has sex with a woman with mutual agreement and complainant accepts compensation therefore. Having sex with complainant once with just compensation does not amount to immoral conduct….

COMPLAINANT EXECUTED AN AFFIDAVIT OF DESISTANCE.

The IBP Commission on Bar Discipline recommended that respondent be suspended for a period of one year from the practice of law for immorality with the warning that repetition of the same or similar act will merit a more severe penalty.

The pertinent provisions in the Code of Professional Responsibility provide:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01. - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

x x x x

Rule 7.03. - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

As we explained in Zaguirre v. Castillo,[14] the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession. It is the bounden duty of members of the bar to observe the highest degree of morality in order to safeguard the integrity of the Bar.[15]Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private activities, which tends to show said lawyer deficient in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.

Immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community.[16] Immoral conduct is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.[17]

From the undisputed facts gathered from the evidence and the admissions of respondent himself, we find that respondent's act of engaging in sex with a young lass, the daughter of his former employee, constitutes gross immoral conduct that warrants sanction. Respondent not only admitted he had sexual intercourse with complainant but also showed no remorse whatsoever when he asserted that he did nothing wrong because she allegedly agreed and he even gave her money. Indeed, his act of having carnal knowledge of a woman other than his wife manifests his disrespect for the laws on the sanctity of marriage and his own marital vow of fidelity. Moreover, the fact that he procured the act by enticing a very young woman with money showed his utmost moral depravity and low regard for the dignity of the human person and the ethics of his profession.

In Cordova v. Cordova,[18] we held that the moral delinquency that affects the fitness of a member of the bar to continue as such includes conduct that outrages the generally accepted moral standards of the community, conduct for instance, which makes a mockery of the inviolable social institution of marriage.

Respondent has violated the trust and confidence reposed on him by complainant, then a 13-year-old minor,[19] who for a time was under respondent's care. Whether the sexual encounter between the

respondent and complainant was or was not with the latter's consent is of no moment. Respondent clearly committed a disgraceful, grossly immoral and highly reprehensible act. Such conduct is a transgression of the standards of morality required of the legal profession and should be disciplined accordingly.

Section 27, Rule 138 of the Rules of Court expressly states that a member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for, among others, any deceit, grossly immoral conduct, or violation of the oath that he is required to take before admission to the practice of law. It bears to stress that membership in the Bar is a privilege burdened with conditions. As a privilege bestowed by law through the Supreme Court, membership in the Bar can be withdrawn where circumstances concretely show the lawyer's lack of the essential qualifications required of lawyers.[20]

Likewise, it was held in Maligsa v. Cabanting[21] that a lawyer may be disbarred for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, probity and good demeanor or unworthy to continue as an officer of the court. Similarly, in Dumadag v. Lumaya,[22] the Court pronounced:

The practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law.

The fact that complainant filed an Affidavit of Desistance during the pendency of this case is of no moment. Complainant's Affidavit of Desistance cannot have the effect of abating the instant proceedings in view of the public service character of the practice of law and the nature of disbarment proceedings as a public interest concern. A case of suspension or disbarment is sui generis and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. A disbarment case is not an investigation into the acts of respondent but on his conduct as an officer of the court and his fitness to continue as a member of the Bar.

Illicit sexual relations have been previously punished with disbarment, indefinite or definite suspension, depending on the circumstances.[24] In this case, respondent's gross misbehavior and unrepentant demeanor clearly shows a serious flaw in his character, his moral indifference to sexual exploitation of a minor, and his outright defiance of established norms. All these could not but put the legal profession in disrepute and place the integrity of the administration of justice in peril, hence the need for strict but appropriate disciplinary action.[25]

The Court is mindful of the dictum that the power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar. Thus, where a lesser penalty, such as temporary suspension, could accomplish the end desired, disbarment should never be decreed.[26] However, in the present case, the seriousness of the offense compels the Court to wield its power to disbar as it appears to be the most appropriate penalty.[27]

WHEREFORE, respondent Atty. Danilo S. Samson is hereby DISBARRED for Gross Immoral Conduct, Violation of his oath of office, and Violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility.