

FIRST DIVISION

[G.R. No. 237522, June 30, 2020]

NATIONAL BUREAU OF INVESTIGATION, PETITIONER, VS. CONRADO M. NAJERA, RESPONDENT.

RESOLUTION

LOPEZ, J.:

The administrative liability arising from an improper raid operation is the main issue in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision^[1] dated May 24, 2017 in CA-G.R. SP No. 144884, which modified the findings of the Office of the Ombudsman.

ANTECEDENTS

On April 17, 2007 at around 2:00 a.m., agents from the National Bureau of Investigation (NBI) composed of Conrado Najera, Frederick Liwag, Joel Respeto and Wilson Monton posed as customers in a disco and amusement center to verify a complaint for human trafficking. Thereat, the team were allegedly provided with two lady entertainers who offered sexual pleasures for a fee. Afterwards, Conrado announced a raid and apprehended 27 employees including the cashier Francis Quilala. The arrested persons were detained at the NB1 Office at Tail Avenue, Manila but were later released.^[2]

Thereafter, Francis filed an administrative complaint against the raiding team before the NBI and claimed that the center is not involved in prostitution. Yet, Conrado ransacked the premises and instructed the other agents to confiscate cigarettes, mobile phones and money from the cash register. Moreover, Conrado attempted to extort P500,000.00 in exchange for the employees' freedom.^[3] On the other hand, Conrado and his team countered that they secured proper authority from their supervisor Chief Head Agent Regner Peneza (Chief Peneza) to raid the establishment which is operating without permit from the local government. At most, Francis fabricated the accusations so he may gain leverage over the charges that they intend to file against him. Lastly, they denied the extortion incident.^[4]

At the investigation, Chief Peneza did not appear and chose not to testify.^[5] Later, the NBI found that the raid was unauthorized and that the agents failed to coordinate the operation with the Anti-Human Trafficking Division and the Violence Against Women and Children Division. The NBI then charged the raiding team with grave misconduct before the Office of the Ombudsman docketed as OMB-C-A-07-0502-J.^[6]

On December 29, 2015, the Ombudsman found Conrado guilty of grave misconduct but dismissed the case against Frederick, Joel and Wilson. It held that Chief Peneza

did not authorize Conrado to conduct a raid while the other members merely obeyed the supposed lawful order,^[7] thus:

WHEREFORE, respondent Conrado M. Najera is found guilty of Grave Misconduct and is meted the penalty of **Dismissal** from the service, together with its accessory penalties. In the event that the penalty of Dismissal can no longer be enforced due to respondent's separation from the service, the same shall be converted into a fine in the amount equivalent to his salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from the retirement benefits, accrued leave credits or any receivables by the respondent Conrado M. Najera from his office. It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

The administrative charge against respondents Frederick G. Liwag, Wilson M. Monton and Joel F. Respeto are hereby **DISMISSED**.

SO ORDERED.^[8]

Unsuccessful at a reconsideration,^[9] Conrado elevated the case to the CA docketed as CA-G.R. SP No. 144884. Conrado argued that the Ombudsman merely affirmed the NBI's bare allegations on the supposed extortion and lack of authority from his supervisor.^[10] On May 24, 2017, the CA partly granted the appeal and downgraded Conrado's liability to simple misconduct. It held that the supposed robbery and extortion were unsubstantiated. Also, it gave credence to the claim that Conrado communicated the operation with Chief Peneza. Otherwise, the supervisor would have been the first to castigate an agent for the oversight. Notably, Chief Peneza did not participate in the investigation which is fatal to NBI's case. Yet, the CA affirmed the Ombudsman's finding that Conrado performed the raid without coordinating it with the other concerned agencies. Accordingly, it suspended Conrado from the service for a period of three months absent proof that his violation was flagrant, viz.:

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Decision dated 29 December 2015 and Joint Order dated 12 February 2016 are **MODIFIED** in that petitioner is merely found **GUILTY** of **SIMPLE MISCONDUCT** and is **SUSPENDED** for three (3) months without pay. If the penalty of suspension can no longer be served, the alternative penalty of fine equivalent to three (3) months salary of petitioner shall be imposed.

SO ORDERED.

The NBI sought reconsideration but was denied. Hence, this petition. The NBI maintained that the Ombudsman's findings of facts must be respected. There is substantial evidence to support that Conrado extorted money and that he acted without authority from his supervisor and prior coordination with relevant agencies.

^[11]

RULING

The NBI raised a question regarding the appreciation of evidence which is one of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the proofs presented below to ascertain if they were weighed correctly.^[12] However, this rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the Ombudsman are contradictory.^[13] In this case, the Ombudsman concluded that Conrado is guilty of grave misconduct while the CA ruled that he is liable only for simple misconduct. Considering these conflicting findings warranting the examination of evidence, this Court will entertain the factual issue on whether substantial evidence exists to prove that Conrado committed grave violation in the conduct of the raid operation.

The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.^[14] The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based.^[15] The respondent is not even obliged to prove his exception or defense.^[16] Given these precepts, we find that there is no substantial evidence to hold Conrado liable for grave misconduct.

Foremost, there is no evidence to establish the extortion. It is incumbent upon the NBI to prove that Conrado attempted to solicit money from Francis. Yet, the NBI failed to present competent evidence and merely relied on Francis' unsubstantiated narrations. It is settled that an allegation of bribery is easy to concoct but difficult to prove. Hence, it is always demanded from the complainant to present a panoply of evidence in support of the accusation.^[17] Also, it bears emphasis that while the rules of evidence are not controlling in administrative bodies in the adjudication of cases, the evidence presented before them must at least have a modicum of admissibility for it to be given some probative value.^[18] Verily, Francis' lone testimony is insufficient to sustain the administrative charge.^[19] The CA properly considered Francis' testimony self-serving and a convenient afterthought coming from the mouth of a person who was caught red-handed committing a crime.^[20]

Similarly, the NBI did not submit substantial evidence showing that Conrado performed the raid without authority from his superior. Notably, Chief Peneza is a key person that can shed light on this issue but he decided to disassociate himself from the investigation for unexplained reasons. Worse, the NBI did not exert any effort to obtain from Chief Peneza any certification or affidavit on his supposed lack of approval. Thus, the CA properly took against NBI the failure to present a material witness, *viz.*:

Going by what appears on the record. Chief Peneza may have chosen to remain tight-lipped and disassociate himself from petitioner in exchange for a free pass for any liability or accountability despite obviously being ultimately responsible for the conduct of his men, including petitioner. Regardless, We are fairly convinced that Chief Peneza either categorically gave his go-signal to petitioner or acquiesced to petitioner's plan.