

# FIRST DIVISION

[ G.R. No. 207926, October 15, 2018 ]

## OFFICE OF THE OMBUDSMAN, PETITIONER, V. COL. NOEL P. MISLANG, RESPONDENT.

### DECISION

#### TIJAM, J.:

This Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 assails the October 15, 2012 Decision<sup>[2]</sup> and June 7, 2013 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 120603, which reversed and set aside the Office of the Ombudsman's Joint Decision<sup>[4]</sup> dated May 9, 2011 in:

- i. OMB-L-A-05-0201-C (*Cecilia S. Luna v. Vicente P. Valera and Col. Noel P. Mislang*);
- ii. OMB-L-A-05-0202-C (*Eduardo Barcelona v. Vicente P. Valera, Col. Noel P. Mislang, Mauro Durwin and Florencio Baharin*); and
- iii. OMB-L-A-05-0309-D (*Elena V Rosqueta v. Vicente P. Valera, Col. Noel P. Mislang, Mauro Durwin and Florencio Baharin*), all for Grave Misconduct.

The Office of the Ombudsman (petitioner) had dismissed the charges against Vicente P. Valera (Valera). Petitioner, however, found Col. Noel P. Mislang (respondent), Mauro Durwin (Durwin) and Florencio Baharin (Baharin) guilty of Grave Misconduct and meted them the penalty of dismissal from the service.<sup>[5]</sup> When respondent appealed to the CA via Rule 43, the CA reversed and set aside the joint decision of the petitioner on the ground of *res judicata* via the presently assailed decision and resolution denying reconsideration thereof.<sup>[6]</sup> The CA found that respondent had been subjected to a General Court Martial at the Philippine Army Headquarters, whereby respondent was adjudged not guilty of the charges in an Order dated February 7, 2007, for the very same acts alleged in the complaints and on the same evidence.<sup>[7]</sup>

#### Antecedent Facts

Respondent Mislang who was the Commanding Officer of the 41<sup>st</sup> Infantry Battalion, Philippine Army (PA), along with Valera, the then Governor of the Province of Abra, and agents Durwin and Baharin of the Military Intelligence Group were all charged with Grave Misconduct before the Office of the Ombudsman for allegedly hatching a plot to kill the former Mayor of Lagayan, Abra, Cecilia S. Luna (Luna) and her family; and in relation to the shooting of complainants Corporal Eduardo Barcelona (Barcelona) and Corporal Antonio Rosqueta (Rosqueta) of the 41<sup>st</sup> Infantry Battalion, PA, where the latter was mortally wounded, for the following:

- i. complaint-affidavit dated March 8, 2005 of Luna;
- ii. complaint-affidavit dated March 11, 2005 of Barcelona, 41<sup>st</sup> Infantry Battalion, PA; and
- iii. complaint-affidavit dated April 13, 2005 of Elena V. Rosqueta.<sup>[8]</sup>

According to Barcelona, he and Rosqueta (now deceased) regularly reported to respondent for both official and unofficial, as well as legal and illegal, instructions. Respondent allegedly gave each of them a .45 caliber pistol in April 2004, and directed them to tail and assassinate Mayor Luna. For the said purpose, they were also provided seed money by the respondent. Barcelona and Rosqueta also met with respondent's so-called assets, Durwin and Baharin.<sup>[9]</sup>

In June 2004, respondent allegedly ordered the inclusion of Mayor Luna's two sons, Ryan and Jendrick, in the assassination plot. In July 2004, respondent brought Barcelona and Rosqueta, and another supposed lackey of respondent, Corporal John Pablo to the place where the assassination was to be done. The murders were supposed to take place during a birthday party. The self-confessed hired gunmen also claimed to have conversed with Valera, who was allegedly privy to the scheme. The planned assassination was, however, not carried out because of the absence of Ryan and Jendrick at the event.<sup>[10]</sup>

The failed assassination plot allegedly enraged respondent. Barcelona and Rosqueta were placed on Absence Without Leave (AWOL) status in December 2004, as they began distancing themselves from the respondent. Subsequently, Respondent also allegedly ordered the assassination of Barcelona and Rosqueta, who in turn filed a complaint with the Intelligence Security Group in Fort Bonifacio against respondent on December 17, 2004.<sup>[11]</sup> Meanwhile, Durwin and Baharin contacted Barcelona and Rosqueta for a meeting. On their way to a party in Isabela Province, Durwin and Baharin shot Rosqueta to death and seriously wounded Barcelona who nonetheless survived.<sup>[12]</sup>

Meanwhile, on March 8, 2004, Barcelona and Rosqueta submitted their affidavits relative to respondent's part in the assassination plot.<sup>[13]</sup> Respondent did not submit a counter-affidavit to refute the charges against him.

While petitioner found insufficient evidence to hold Valera administratively liable<sup>[14]</sup>, it nonetheless deemed the evidence substantial enough to conclude that respondent, together with agents Durwin and Baharin, were guilty of unlawful behavior in relation to their office.<sup>[15]</sup>

Consequently on May 9, 2011, the petitioner issued its Joint Decision, which disposed as follows:

**WHEREFORE**, premises considered:

1. The charges for Grave Misconduct against respondent **VICENTE P. VALERA** are hereby **DISMISSED**.
2. Respondents **COLONEL NOEL MISLANG**, Batallion Commander, 41<sup>st</sup> Infantry Batallion, Philippine Army, **MAURO DURWIN**, Agent, Military

Intelligence Group, and **FLORENCIO BAHARIN**, Agent, Military Intelligence Group, are hereby found **GUILTY** of **GRAVE MISCONDUCT** and are accordingly **METED OUT** the penalty of **DISMISSAL FROM THE SERVICE**.

The Commanding General, Philippine Army, or his duly authorized representative is hereby directed to immediately implement this Decision.

**SO ORDERED.**<sup>[16]</sup>

On the same date, petitioner issued an Order<sup>[17]</sup> for the execution of respondent's dismissal from the service.

Aggrieved, respondent sought recourse before the CA without first moving for reconsideration the petitioner's Joint Decision.<sup>[18]</sup> Neither the petitioner nor the complainants filed a comment on the petition before the CA.<sup>[19]</sup>

Considering that no comment on the petition was filed before it, the CA considered respondent's assertion that neither copies of the complaint-affidavits, nor any order from the petitioner to file his counter-affidavits were received by him. The CA took notice of the manifestations and motions filed by the respondent before the petitioner, alternatively asking either to be furnished copies of the complaints or seeking the dismissal of the administrative cases for violation of due process and his right to a speedy disposition of his cases. Respondent contended that he was not made a party to the proceedings.

On June 16, 2009, or four years after the complaints were filed before the petitioner, respondent's former counsel Atty. Leonardo P. Tamayo wrote a letter to Hon. Emilio A. Gonzales III, Deputy Ombudsman for Military and Other Law Enforcement Office (MOLEO), informing the latter that several complaints based on the same evidence supporting the complaints filed before the petitioner had also been filed against the respondent before the General Court Martial, PA; that while pending preliminary investigation before the petitioner, the General Court Martial took cognizance of the complaints, arraigned the respondent, heard the cases and rendered an Order on February 7, 2007 declaring respondent "Not Guilty".<sup>[20]</sup>

The records also disclosed a letter<sup>[21]</sup> dated November 11, 2010 of Director Wilbert Candelaria (Dir. Candelaria), Public Assistance and Corruption Prevention Office, Office of the Deputy Ombudsman for Luzon, informing respondent's counsel that OMB-L-A-05-0202-C and OMB-L-C-05-0276-C were already dismissed as of September 24, 2010; while OMB-L-A-05-0201-C, OMB-L-C-05-0275-C, OMB-L-A-05-0309-D, and OMB-L-C-05-0409-D were still undergoing preliminary investigation and administrative adjudication.

On October 15, 2012, the CA issued the presently assailed decision. Reasoning that the rule of "*res inter alios acta alteri nocere non debet*"<sup>[22]</sup> applies in this case, the CA observed that the evidence relied upon by the petitioner were the affidavits of Barcelona and Rosqueta, implicating the respondent in a supposed conspiracy through their admissions of illegal activities. In this regard, the CA found no independent or extraneous evidence to prove conspiracy.

The CA also found that the General Court Martial, PA, had jurisdiction over the complaints against the respondent, citing the Memorandum of Agreement<sup>[23]</sup> (MOA)

dated January 28, 2004 between the Armed Forces of the Philippines (AFP) and the Office of the Ombudsman. delineating the lines of disciplinary authority between them. The appellate court thus ruled that the decision of the General Court Martial finding respondent "Not Guilty" became *res judicata* to the effect that the petitioner was precluded from further acting on the same complaints investigated, tried, and deliberated upon by the military court under the following charges:

**CHARGE Violation of the 96<sup>th</sup> Article of  
I: War.  
(Conduct Unbecoming of an  
Officer and a Gentleman)**

Specification I: In that LTC NOEL P. MISLANG 0-9155 INF (GSC) PA during his incumbency as the Commanding Officer of the 41<sup>st</sup> Infantry Battalion, 5<sup>th</sup> Infantry Division, Philippine Army, a person subject to military law, did, sometime in April 2004 before the National and Local Election, at the province of Abra, wrongfully and unlawfully issued an order to Cpl Eduardo A Barcelona 805092 (Inf) PA and Pfc Antonio R Rosqueta 792505 (Inf) PA, intelligence operatives of 41<sup>st</sup> Infantry Battalion, 5<sup>th</sup> Infantry Division, Philippine Army, to assassinate Mayor Cecil Luna, and her family, of Lagayan, Abra. Contrary to law.

**CHARGE Violation of the 97<sup>th</sup>  
II: Article of War.  
(Neglects to the Prejudice  
of Good Order and Military  
Discipline)**

Specification I: In that LTC NOEL P. MISLANG 0-9155 INF (GSC) PA, while being the Commanding Officer of the 41<sup>st</sup> Infantry Battalion, 5<sup>th</sup> Infantry Division, Philippine Army, a person subject to military law, did, for the period covering June 2004 to November 2004, fail to institute prompt disciplinary actions against his erring personnel namely: Cpl Eduardo A Barcelona 805092 (Inf) PA and Pfc Antonio R Rosqueta 792505 (Inf) PA, intelligence operatives of 41<sup>st</sup> Infantry Battalion, 5<sup>th</sup> Infantry Division, Philippine Army, knowing them to be involved in illegal activities. Contrary to law.<sup>[24]</sup>

The petitioner is now before this Court arguing that *res judicata* is inapplicable in this case, and insisting that the factual findings in its May 9, 2011 Joint Decision are supported by substantial evidence, and thus conclusive upon the reviewing authority.

**Issue**

Did the CA correctly set aside the Office of the Ombudsman's Joint Decision dated May 9, 2011?

Petitioner insists that the same was based on substantial evidence and points out that it may render its decision in administrative disciplinary cases based only on the affidavits and documents constituting the evidence on record, as it had done so in this case.<sup>[25]</sup>

Furthermore, petitioner argues that it has jurisdiction over the complaints against respondent notwithstanding the General Court Martial's exercise of its concurrent jurisdiction over the same acts subject of the complaints.<sup>[26]</sup>

Finally, petitioner now argues that respondent violated the principle of exhaustion of administrative remedies in filing his petition for review before the CA without prior resort to a motion for reconsideration before the Ombudsman. Petitioner also asserts that respondent failed to attach a copy of the assailed May 9, 2011 Joint Decision to respondent's petition that was filed before the CA, which allegedly should have been fatal to respondent's appeal.<sup>[27]</sup>

### **The Court's Ruling**

Addressing the alleged procedural errors first, this Court finds no merit in petitioner's contention that respondent's Rule 43 petition before the CA should have been dismissed outright. The inference that the assailed Joint Decision was not attached to the petition lodged before the CA cannot be made simply from petitioner's bare assertion that the wrong document was attached to its copy of the petition furnished by the respondent. It does not necessarily follow that the CA was not furnished a correct copy of the appealed Joint Decision. A plain reading of the CA's decision would show that it apparently had a copy of the subject May 9, 2011 Joint Decision, as it even cited the same in its footnotes.<sup>[28]</sup> The CA then was not deprived the opportunity to fully review the appealed Joint Decision. Petitioner also could have manifested and resolved this matter before the appellate court. It is now too late in the day to make a fatal issue of it before this Court.

The argument that respondent failed to exhaust administrative remedies by not filing a motion for reconsideration prior to appealing his case before the CA also fails to persuade. The doctrine of exhaustion of administrative remedies is not absolute.<sup>[29]</sup> The exceptions include instances when there is a violation of due process, as well as when the issue involved is purely a legal question.<sup>[30]</sup> Recall that respondent alleged that he was not furnished copies of the complaints despite repeated manifestations and motions lodged before the petitioner, requesting that he be furnished so that he could file his counter-affidavits and position paper. Due process concerns had been put in issue before the CA. Also raised on appeal was the legal effect of respondent's "acquittal" before the General Court Martial on the pending complaints before the Ombudsman, undoubtedly a legal question. There was thus sufficient basis to dispense with a prior motion for reconsideration.

On the question of jurisdiction, it is beyond dispute that the Ombudsman<sup>[31]</sup> and the General Court Martial of the AFP have concurring or coordinate jurisdiction over administrative disciplinary cases involving erring military personnel, particularly over violations of the Articles of War that are service-connected.<sup>[32]</sup> We briefly revisit the nature of court-martial proceedings for context.

In discussing the suppletory application of the Revised Penal Code to court-martial proceedings insofar as those not provided in the Articles of War and the Manual for Courts-Martial, this Court had clarified that a court-martial is a court, and the prosecution of an accused before it is a criminal and not an administrative case.<sup>[33]</sup> Nonetheless, in threshing out the court martial's jurisdiction and the nature of offenses committed by military personnel under the Articles of War, this Court also emphasized its administrative disciplinary character, viz: