

SECOND DIVISION

[G.R. No. 208086, July 27, 2016]

**FLORENCIO MORALES, JR., PETITIONER, VS. OMBUDSMAN
CONCHITA CARPIO-MORALES, ATTY. AGNES VST DEVANADERA,
ATTY. MIGUEL NOEL T. OCAMPO, ATTY. JOYCE MARTINEZ-
BARUT, ATTY. ALLAN S. HILBERO, AND ATTY. EDIZER J.
RESURRECION, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

Before this Court is a petition for *certiorari*^[1] under Rule 65 of the Rules of Court filed by Florencio Morales, Jr. (petitioner) assailing the Order dated 13 January 2012, Review Order dated 25 October 2012, and Order dated 15 April 2013, denying his motion for reconsideration, issued by the Office of the Ombudsman in CPL-C-11-2601.

The Facts

On 16 June 2007, Atty. Demetrio L. Hilbero was gunned down near his home in Calamba City, Laguna.^[2] The Philippine National Police (PNP) in Calamba City conducted an investigation on the incident. Among the findings were that the shooting was committed by two motorcycle-riding perpetrators and that it was a case of mistaken identity, since other members of the Hilbero family have been found to have conflicts with groups capable of carrying out the killing. The PNP also reported that on 26 December 2007, Atty. Allan S. Hilbero, the victim's son, prepared his Sinumpaang Salaysay claiming that the shooting was committed by Sandy Pamplona, petitioner and two others. The PNP's Criminal Investigation and Detection Group in Cabuyao, Laguna recommended the filing of a criminal case for Murder against petitioner, Sandy Pamplona, Lorenzo Pamplona, and Primo Lopez.^[3]

In an undated Memorandum,^[4] respondent Atty. Miguel Noel T. Ocampo (Atty. Ocampo) of the Calamba City Prosecutors Office, voluntarily inhibited himself from handling the investigation on the ground that the complainant is his friend, and that the Administrative Officer in his office is a relative of the victim.

On 10 January 2008, Regional State Prosecutor Ernesto C. Mendoza issued Order No. 08-04^[5] designating Assistant Regional State Prosecutor Dominador A. Leyros to investigate I.S. No. 1428-07, *Atty. Allan Hilbero v. Florencio Morales, Jr., et al.*, for Murder. After the preliminary investigation, on 6 May 2008, the Office of the Regional State Prosecutor, Region IV issued a Resolution^[6] finding probable cause for the filing of an Information for Murder against Lorenzo Pamplona and Primo

Lopez. The charges against petitioner and Sandy Pamplona were dismissed.^[7]

Atty. Allan S. Hilbero appealed the resolution to the Department of Justice (DOJ), while Lorenzo Pamplona and Primo Lopez also filed their separate petition for review. In Resolution No. 212, series of 2009,^[8] dated 18 March 2009, the DOJ dismissed the appeal and absolved the four accused. Atty. Allan S. Hilbero filed a motion for reconsideration. In a Resolution^[9] dated 30 September 2009, then Secretary of Justice Agnes VST Devanadera (Sec. Devanadera) ordered the prosecution of all four accused, thus:

WHEREFORE, premises considered, the motion for reconsideration is hereby GRANTED. The DOJ resolution (Resolution 212, series of 2009) is hereby RECONSIDERED and SET ASIDE. Accordingly, the Office of the Regional State Prosecutor of Region IV, San Pablo City, is directed to file the necessary information for murder against respondents Primo Lopez, Lorenzo Pamplona, Florencio Morales, Jr. and Sandy Pamplona, should the information filed earlier against respondents Primo Lopez and Lorenzo Pamplona was already withdrawn, otherwise, to cause the amendment thereof to include respondents Sandy Pamplona and Florencio Morales, Jr. in the information as co-accused, and report the action taken hereon within ten (10) days from receipt thereof.^[10]

Petitioner then filed a petition for *certiorari* before the Court of Appeals (CA) docketed as CA-G.R. SP No. 111191. In a Decision^[11] dated 7 June 2011, the CA modified the DOJ Resolution by dropping the charge against petitioner. Atty. Allan S. Hilbero filed a motion for reconsideration, which was denied.^[12] In a Resolution^[13] dated 17 October 2011, the RTC complied with the CA decision and dropped petitioner as an accused.

On 19 December 2011, petitioner filed a Complaint-Affidavit before the Office of the Ombudsman charging Sec. Devanadera, Atty. Ocampo, Assistant City Prosecutors Joyce Martinez-Barut, Allan S. Hilbero and Edizer J. Resurrecion with (1) Grave Abuse of Authority, (2) Grave Misconduct, (3) Falsification of Public Documents, and (4) violations of the Anti-Graft and Corrupt Practices Act, as amended, the Code of Conduct of Professional Services, and the Revised Penal Code.

Orders of the Office of the Ombudsman

In the first of the assailed orders dated 13 January 2012,^[14] the Office of the Ombudsman dismissed petitioner's complaint. It said, "[a] judicious examination of complainant's allegations and his pieces of evidence impels us to dispense with the conduct of the necessary investigation on the herein complaint."^[15]

Meanwhile, in its Review Order^[16] dated 25 October 2012, the Office of the Ombudsman noted that the administrative complaint against Sec. Devanadera was filed "after she had ceased to be in service."^[17] Citing jurisprudence, it held that "this Office can no longer institute an administrative case against a public servant who, at the time the case was filed, is no longer with the service."^[18]

It further held:

[Under] paragraph[s] (1) and (2), Section 20 of Republic Act 6770 (The Ombudsman Act of 1989), x x x the Office of the Ombudsman may not conduct the necessary investigation of any *administrative* act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;

(2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;

[x x x x]

Parenthetically, the complainant already availed of a legal remedy when he elevated respondent Devanadera's Resolution *via* Petition for Certiorari, Prohibition and Mandamus with the CA, which held that there was abuse of discretion and thus, ordered the dropping of complainant's name in the Information.

Moreover, the determination on the correctness of the contents of the questioned Amended Information rests with the Regional Trial Court where the same was filed, and not with this Office.

Moreover, complaint's bare allegation that Hilbero was regularly attending the hearing of [C]riminal [C]ase No. 1582-08 conducted at Branch 37 of the Regional Trial Court of Calamba City without filing of leave of absence cannot be given probative value for being unsubstantiated.

WHEREFORE, the complaint filed by Florencio Morales, Jr. against former Acting Secretary of Justice Agnes VST Devanadera, City Prosecutor Miguel Noel T. Ocampo, and Assistant City Prosecutors-[Designate] Joyce Martinez-Barut, Allan S. Hilbero and Edizer J. Resurrecion is DISMISSED.

SO ORDERED.^[19]

Petitioner moved for reconsideration of the Review Order.^[20] In its Order^[21] dated 15 April 2013, the Office of the Ombudsman denied said motion for reconsideration holding that "[n]o new evidence was submitted nor were there grave errors of facts and laws or serious irregularities committed by this Office prejudicial to the interest of the movant Morales, which would warrant a reversal of the [Review] Order."^[22]

Thereafter, petitioner filed the present petition for *certiorari* under Rule 65, arguing that respondent Ombudsman Conchita Carpio-Morales committed grave abuse of discretion in issuing the three assailed orders.

Petitioner's Arguments

Petitioner argues that Ombudsman Carpio-Morales committed grave abuse of discretion:

(1) in not conducting the proper preliminary investigation of the criminal case and taking cognizance of the complaint against

private respondents Ocampo, Bar[u]t and [Allan] Hilbero who acted in conspiracy with each other, when with abuse of authority and total disregard of the law, caused the alteration or falsification of the Information and the Amended Information in Criminal Case No. 15782-08-C by making untruthful statements] in the Information and Amended Information filed in court by fabricating and including treachery and abuse of superior strength which were not even found and mentioned in the Resolution of respondent Agnes Devanadera dated September 30, 2009 and the Resolution of the Panel of Prosecutors dated May 6, 2008. Petitioner and his then co-accused in said case were denied their constitutional right to due process;[23]

- (2) when she refused to investigate and charged [sic] the private respondents of the proper criminal case/s despite the existence of clear and convincing evidence against them which act clearly constitutes denial of due process;[24]
- (3) when she failed to rule that respondent Devanadera violated the Code of Professional Conduct, Revised Penal Code and the Anti[-]Graft and Corrupt Practices Act as Amended;[25]
- (4) when she failed to assume jurisdiction and investigate the Complaint filed by petitioner which clearly established participation and acts of conspiracy of private respondent Hilbero with the other respondents. Private respondent Hilbero's participation was clearly established from the inception of the fabricated case against petitioner Florencio Morales, Jr.;[26]
- (5) in not taking cognizance of the complaint filed by the petitioner despite clear and convincing evidence that private respondent Hilbero as then Clerk of Court was actively participating and appearing in the hearings of Criminal Case No. 15782-08-C without filing leave of absence from his work as clerk of court;[27] and
- (6) in not taking cognizance of the complaint filed by the petitioner despite the clear and convincing evidence that private respondent Resurrecion should also be charged and be held accountable.[28]

Petitioner points out that "Ocampo, Bar[u]t and Hilbero were not the one[s] who conducted the preliminary investigation x x x [but nonetheless] made it appear in the [allegedly] falsified Information and Amended Information that treachery and abuse of superior strength were established during the preliminary investigation." [29]

Petitioner argues that the Ombudsman "should have properly conducted a preliminary investigation to determine the culpability of the private respondents"[30] since there was "clear and convincing documentary proof of the existence of two (2) counts of falsification committed by private respondents." [31]

He further argues that filing the case with the Court of Appeals "could not be considered adequate remedy" since that case "involved only the person of [petitioner]" and merely addressed the issue of "erroneously impleading petitioner in the case and NOT the issue of alteration or falsification of the Information and

Amended Information."^[32]

Petitioner also accuses respondent prosecutors of falsification and abuse of authority for changing the aggravating circumstances in the original Information (nighttime) to treachery and abuse of superior strength in the Amended Information.^[33]

Next, petitioner alleges that Sec. Devanadera defied the Court of Appeals' ruling in CA-G.R. SP No. 101196 and, without legal basis, "disregarded the Resolution dated May 6, 2008 made by the Panel of Prosecutors x x x wherein petitioner was exonerated in both decisions."^[34]

Respondent Prosecutors' Arguments

In their Comment,^[35] Attys. Ocampo, Martinez-Barut, Allan S. Hilbero, and Resurrecion prayed that the petition be dismissed for lack of merit.^[36]

They argue that "findings of fact of the Ombudsman, when duly supported by evidence, are conclusive."^[37] Respondent prosecutors pointed out that the Court has refrained from interfering with the Ombudsman's exercise of her constitutional powers to investigate and to prosecute.^[38]

Next, they aver that "the record clearly reveals that respondents Ocampo, [Martinez-Barut] and Resurrecion had acted within the scope of their authority and in line with their official duties. Respondent Ocampo amended the [I]nformation as a matter of function, as was the case with respondent [Martinez-Barut] who re-amended the [I]nformation pursuant to a directive^[39] dated October 22, 2009 from the Office of the Regional State Prosecutor in conjunction [with] a Resolution^[40] dated September 30, 2009 from the Department of Justice to include in the indictment accused Sandy Pamplona and Florencio Morales, Jr. Thus, the fact that their action was later not completely sustained by the Court of Appeals would not render them administratively nor criminally liable."^[41]

These amendments, they argue, were "given imprimatur by the trial court, which imprimatur was used by the Ombudsman in brushing aside petitioner's gripe on the matter."^[42]

Lastly, they insist that "as a rule, a public officer, whether judicial, quasi-judicial or executive, is not personally liable to one injured in consequence of an act performed within the scope of his official authority, and in the line of his official duty."^[43]

Office of the Ombudsman's Arguments

On the other hand, the Office of the Ombudsman prays that the Court dismiss the petition on the following grounds:

I.

PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT FILED BY THE PETITIONER AS THIS IS ALLOWED BY THE PROVISIONS OF