

SECOND DIVISION

[G.R. No. 196842, October 09, 2013]

**ALFREDO ROMULO A. BUSUEGO, PETITIONER, VS. OFFICE OF
THE OMBUDSMAN (MINDANAO) [AND] ROSA S. BUSUEGO,
RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Before us is a petition for *certiorari* seeking to annul and set aside the Resolution of the Ombudsman dated 17 April 2009^[1] and Order dated October 2010,^[2] which directed the filing of an Information for Concubinage under Article 334 of the Revised Penal Code against petitioner Alfredo Romulo A. Busuego (Alfredo).

We chronicle the facts thus.

Private respondent Rosa S. Busuego (Rosa) filed a complaint for: (1) Concubinage under Article 334 of the Revised Penal Code; (2) violation of Republic Act No. 9262 (Anti-Violence Against Women and Their Children); and (3) Grave Threats under Article 282 of the Revised Penal Code, before the Office of the Ombudsman against her husband, Alfredo, with designation Chief of Hospital, Davao Regional Hospital, Apokon, Tagum City.

In her complaint, Rosa painted a picture of a marriage in disarray.

She and Alfredo were married on 12 July 1975 at the Assumption Church, Davao City. Their union was blessed with two (2) sons, Alfred and Robert, born in 1976 and 1978, respectively. Sometime in 1983, their marriage turned sour. At this time, Rosa unearthed photographs of, and love letters addressed to Alfredo from, other women. Rosa confronted Alfredo who claimed ignorance of the existence of these letters and innocence of any wrongdoing.

Purportedly, Alfredo very rarely stayed at home to spend time with his family. He would come home late at night on weekdays and head early to work the next day; his weekends were spent with his friends, instead of with his family. Rosa considered herself lucky if their family was able to spend a solid hour with Alfredo.

Around this time, an opportunity to work as nurse in New York City, United States of America (US) opened up for Rosa. Rosa informed Alfredo, who vehemently opposed Rosa's plan to work abroad. Nonetheless, Rosa completed the necessary requirements to work in the US and was scheduled to depart the Philippines in March 1985.

Before leaving, Rosa took up the matter again with Alfredo, who remained opposed to her working abroad. Furious with Rosa's pressing, Alfredo took his loaded gun and

pointed it at Rosa's right temple, threatening and taunting Rosa to attempt to leave him and their family. Alfredo was only staved off because Rosa's mother arrived at the couple's house. Alfredo left the house in a rage: Rosa and her mother heard gun shots fired outside.

Because of that incident, Rosa acted up to her plan and left for the US. While in the US, Rosa became homesick and was subsequently joined by her children who were brought to the US by Alfredo. Rosa singularly reared them: Alfred, from grade school to university, while Robert, upon finishing high school, went back to Davao City to study medicine and lived with Alfredo.

During that time his entire family was in the US, Alfredo never sent financial support. In fact, it was Rosa who would remit money to Alfredo from time to time, believing that Alfredo had stopped womanizing. Rosa continued to spend her annual vacation in Davao City.

Sometime in 1997, Rosa learned that a certain Emy Sia (Sia) was living at their conjugal home. When Rosa asked Alfredo, the latter explained that Sia was a nurse working at the Regional Hospital in Tagum who was in a sorry plight as she was allegedly being raped by Rosa's brother-in-law. To get her out of the situation, Alfredo allowed Sia to live in their house and sleep in the maids' quarters. At that time, Rosa gave Alfredo the benefit of the doubt.

In October 2005, Rosa finally learned of Alfredo's extra-marital relationships. Robert, who was already living in Davao City, called Rosa to complain of Alfredo's illicit affairs and shabby treatment of him. Rosa then rang up Alfredo which, not surprisingly, resulted in an altercation. Robert executed an affidavit, corroborating his mother's story and confirming his father's illicit affairs:

1. In varying dates from July 1997 to January 1998, Robert found it strange that Sia slept with his father in the conjugal bedroom.
2. He did not inform his mother of that odd arrangement as he did not want to bring trouble to their family.
3. Eventually, Sia herself confirmed to Robert that she was Alfredo's mistress.
4. During this period of concubinage, Sia was hospitalized and upon her discharge, she and Alfredo resumed their cohabitation.
5. The relationship between Alfredo and Sia ended only when the latter found another boyfriend.
6. His father next took up an affair with Julie de Leon (de Leon) whom Robert met when de Leon fetched Alfredo on one occasion when their vehicle broke down in the middle of the road.
7. Robert read various Short Message Service (SMS) exchanges between Julie and Alfredo on Alfredo's mobile phone.
8. On 23, 24, 30 and 31 December 2004, de Leon stayed in Rosa's and Alfredo's conjugal dwelling and stayed in the conjugal room the entire nights thereof.

The househelpers, Melissa S. Diambangan and Liza S. Diambangan, likewise executed a joint affidavit in support of Rosa's allegations:

1. They had seen Sia sleep and stay overnight with Alfredo in the conjugal bedroom.
2. Sia herself, who called Alfredo "Papa," confirmed the two's sexual relationship.
3. On 23, 24, 30 and 31 December 2004, de Leon stayed in the conjugal dwelling and slept overnight with Alfredo in the conjugal room.

As a result, Rosa and their other son Alfred forthwith flew to Davao City without informing Alfredo of their impending return. Upon Rosa's return, she gathered and consolidated information on her husband's sexual affairs.

Pursuant to her charges of violation of Republic Act No. 9262 and Grave Threats, Rosa averred that during the course of their marriage, apart from the marital infidelity, Alfredo physically and verbally abused her and her family. On one occasion after Rosa confirmed the affairs, Alfredo threatened their family, including other members of their household that he will gun them down should he chance upon them in Tagum City. Lastly, on 22 March 2006, Alfredo purportedly dismissed house helper Liza Diambangan and threatened her.

As expected, Alfredo, in his counter-affidavit, denied all accusations against him and alleged that:

1. Rosa, despite his pleas for them to remain and raise their family in the Philippines, chose to live in the US, separate from him.
2. Rosa's allegations that he had kept photographs of, and love letters from, other women, were only made to create a cause of action for the suit for Legal Separation which Rosa filed sometime in 1998.
3. It was highly improbable that he committed acts of concubinage with Sia and de Leon since from the time he became Chief of Hospital of the Davao Regional Hospital in Tagum City, he practically stayed all days of the work week in the hospital. The instances he went home were few and far between, only to check on the house and provide for household expenses.
4. When Robert returned to Davao City and lived with him, it became more impossible for him to have shacked up with Sia and de Leon in the conjugal dwelling.
5. With respect to his alleged relationship with Sia, without admitting to anything, that Sia, for a time, may have lived in his and Rosa's conjugal house, staying at the maids' quarters. However, at no instance did he keep Sia as his mistress in the conjugal dwelling.
6. As regards the dates of December 23, 24, 30 and 31, 2004 when he supposedly stayed with de Leon in the conjugal room, Alfredo pointed out that said dates were busiest days of the year in the hospital where his presence as Chief of Hospital is most required.

7. By Rosa's own admission, she first learned of Alfredo's alleged concubinage in 1997, and yet she still continued with her yearly visits to Alfredo in Davao City. Those instances ought to be construed as condonation of the concubinage.
8. Significantly, the alleged concubines, Sia and de Leon, were not impleaded along with Alfredo as party-respondents in the complaint in violation of Article 344 of the Revised Penal Code.

Alfredo made short shrift of Rosa's charges of violation of Republic Act No. 9262 and Grave Threats. He claimed that, at no time, did he threaten, the lives or, to harm his wife, their family and members of their household. He only berated the help for perpetrating gossip about his behavior and conduct.

In their subsequent exchange of responsive pleadings, Rosa maintained Alfredo's culpability, and naturally, Alfredo claimed innocence.

In the course thereof, the procedural issue of Rosa's failure to implead Sia and de Leon as respondents cropped up. Alfredo insisted that Rosa's complaint ought to be dismissed for failure to implead his alleged concubines as respondents.

Specifically to dispose of that issue, the Ombudsman scheduled a clarificatory hearing where both Rosa and Alfredo were represented by their respective counsels:

x x x Rosa was apprised of the need to implead the two alleged mistresses in the complaint for Concubinage pursuant to Article 344 of the Revised Penal Code. Although Alfredo objected to the amendment of the complaint, at this point in time, due to the alleged procedural lapse committed by Rosa, this Office explained to the parties that the position of Alfredo would just prolong the conduct of the preliminary investigation since Rosa can just re-file her complaint. The doctrine of *res judicata* does not apply in the preliminary investigation stage. Hence, the counsel for Rosa was directed to submit to this Office the addresses of the alleged mistresses so that they could be served with the Order directing them to file their counter-affidavits.

Rosa submitted an *Ex-Parte* Manifestation on the last known addresses of Julie de Leon and Emy Sia. x x x.^[3]

On 24 June 2008, the Ombudsman issued a Joint Order^[4] impleading Sia and de Leon as party-respondents in the complaint for Concubinage and directing them to submit their respective counter-affidavits within a period of time. Copies of the Joint Order were mailed to Sia's and de Leon's last known addresses, as provided by Rosa to the Ombudsman.

Sia and de Leon did not submit their respective counter-affidavits: a copy of the Joint Order sent to Sia's last known address was returned to the Ombudsman with the notation on the Registry Return Receipt No. 1624 "Return to Sender; removed," while a copy thereof to de Leon was received on 3 September 2008 by Ananias de Leon.^[5]

Apparently still opposed to the Ombudsman's ruling to simply amend the complaint and implead therein Alfredo's alleged mistresses, Alfredo filed his Comment to the

24 June 2008 Order with Motion to Dismiss and/or Refer the charges to the Appropriate Provincial/City Prosecutor⁶ praying for dismissal of the complaint for: (1) failure to implead the two mistresses in violation of Article 344 of the Revised Penal Code; and in the alternative, (2) referral of the complaint to the Office of the City Prosecutor as provided in OMB-DOJ Circular No. 95-001.

Rosa filed a Reply to that latest pleading of Alfredo.

On 17 April 2009, the Ombudsman issued the herein assailed Resolution, disposing of the procedural issues:

Before dwelling into the merits of the case, this Office finds an urgent need to resolve the ancillary issues raised by petitioner Dr. Busuego on: 1.) the alleged legal infirmity of Rosas's initiatory pleading by resorting to a procedural short cut which would result to the delay in the disposition of this case; and 2.) the criminal charges imputed are not in relation to office, hence, the Office of the Provincial/City Prosecutor shall investigate and prosecute this case pursuant to OMB-DOJ Joint Circular No. 95-001, Series of 1995.

On the first issue, this Office observed that Busuego had already pointed out in his counter-Affidavit the alleged deficiency in the complaint. Rosa also explained in her Reply that the names of the mistresses were categorically mentioned in the complaint. She averred that this Office is empowered to investigate and prosecute any act or omission of a public official or employee to the exclusion of non-government employees. She stated that the inclusion of the alleged concubines in the Information to be filed in court is a matter of procedure, within the competence of the investigating prosecutor.

In order to clarify some matters, including the said issue, with the parties, the clarificatory hearing was conducted. It was explained in the said hearing the need to implead the alleged concubines in this case pursuant to Article 344 of the Revised Penal Code and to obviate the proceedings, Rosa was directed to submit the addresses of the alleged concubines. Busuego's position that the said short cut procedure would delay the proceedings is misplaced. If the case will be dismissed based on procedural infirmity, Rosa could still amend her complaint and re-file this case since the doctrine of *res judicata* does not apply in the preliminary investigation stage of the proceedings.

On the second issue, the motion of Busuego to refer this case to the Office of the City Prosecutor was belatedly filed. Record would show that the motion praying for the referral of this case to the Office of the City Prosecutor was filed on 17 July 2008, after the parties have already filed all their pleadings and the case is now ripe for resolution. Further, referral to the said office is not mandatory as cited in the said Joint Circular.^[6]

In the same Resolution, the Ombudsman, ultimately, found probable cause to indict only Alfredo and Sia of Concubinage and directed the filing of an Information against them in the appropriate court: