



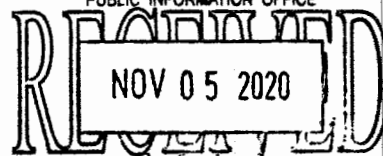
Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

Misael D. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

NOV 03 2020

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



BY: R. Santiago
TIME: 1:47

PO3 JERRY INES,
Petitioner,

G.R. No. 224345

Present:

- versus -

LEONEN, J., Chairperson,
GESMUNDO,
CARANDANG,
LOPEZ,* and
GAERLAN, JJ.

Promulgated:

MUHAD M. PANGANDAMAN,
Respondent.

September 2, 2020

Misael D. Battung III

X ----- X

RESOLUTION

GESMUNDO, J.:

This is an appeal by *certiorari*¹ seeking to reverse and set aside the October 14, 2014 Decision² and April 25, 2016 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 132694, which found PO3 Jerry Ines (*petitioner*) guilty of Grave Misconduct and dismissed him from service. The CA affirmed *in toto* the January 21, 2013 Decision⁴ of the Office of the Ombudsman (*Ombudsman*), docketed as OMB-P-A-10-0879-H, entitled "*Muhad M. Pangandaman v. P/Supt. Crisostomo P. Mendoza, et al.*"

* Designated as additional member in lieu of Associate Justice Rodil V. Zalameda, per raffle dated July 27, 2020.

¹ *Rollo*, pp. 12-28.

² Id. at 31-41; penned by Associate Justice Rodil V. Zalameda (now a Member of this Court) with Associate Justices Ramon M. Bato, Jr. and Eduardo B. Peralta, Jr. concurring.

³ Id. at 43-49.

⁴ Id. at 73-79; penned by Graft Investigation and Prosecution Officer Yvette Marie S. Evaristo with the approval of Director Dennis L. Garcia and Overall Deputy Ombudsman Orlando C. Casimiro.

Antecedents

On January 11, 2010, at around 9:30 p.m., Muhad M. Pangandaman (*respondent*),⁵ while tending his store along Litex Road, Commonwealth Avenue, Quezon City, was arrested by several policemen for allegedly violating the gun ban. He was taken to Police Station 6, Batasan Hills, Quezon City, where he was detained. In exchange for his freedom, the police officers, later identified as Police Superintendent Crisostomo Mendoza (*P/Supt. Mendoza*), SPO1 Amor Guiang (*SPO1 Guiang*), PO2 Rodger⁶ Ompoy (*PO2 Ompoy*), SPO2 Dante Nagera⁷ (*SPO2 Nagera*), and petitioner, demanded from respondent the sum of Two Hundred Thousand Pesos (₱200,000.00).

Respondent's relatives, Diamungan M. Pangandaman (*Diamungan*) and Mampao D. Rasul (*Mampao*), who witnessed petitioner and his team arrest respondent, sought the help of the President of the Muslim Vendor's Association in Litex, Mangorsi Ampaso (*Ampaso*). Ampaso went to the police station and handed the money to SPO2 Nagera, but respondent was not released. Dissatisfied, the policemen again demanded the amount of One Hundred Thousand Pesos (₱100,000.00). It was only upon payment of the additional sum that petitioner and the other police officers released respondent.


Hence, respondent executed a *Sinumpaang Salaysay* dated January 16, 2010 narrating the incident, corroborated by the affidavits of Diamungan and Mampao. In his *Sinumpaang Salaysay*, petitioner did not expressly name all those who participated in his arrest. The pertinent portion of the *Sinumpaang Salaysay* reads, "*ang mga pulis kasama si Major Dante [Nagera] na nanghuli kay Muhad Pangandaman.*"

On February 24, 2010, respondent filed a *Karagdagang Sinumpaang Salaysay*. This time, respondent named the other policemen who colluded with SPO2 Nagera, including petitioner, to wit: "*Don sa Police Station, si SPO2 Dante [Nagera] at kasama niya ang mga pulis na sina PO3 Jerry [Ines], PO2 Ompoy, PO3 Polito, PO3 Perez, PO2 Vacang and PO2 Amor Guiang lahat nakatalaga sa Police Station 6, Quezon City, na humuli kay Muhad Pangandaman[.]*"

⁵ Id. at 205; per June 21, 2017 Resolution, Muhad M. Pangandaman was dropped as respondent because petitioner cannot provide the Court with the former's proper address.

⁶ Referred to as PO2 "Roger" Ompoy in other parts of the *rollo*.

⁷ Referred to as SPO2 Dante "Naguera" in other parts of the *rollo*.



Two (2) cases were filed against petitioner and his team who participated in the arrest of respondent, namely: (1) an administrative case⁸ for grave misconduct; and (2) criminal cases⁹ for robbery extortion,¹⁰ unlawful arrest, arbitrary detention, and violation of Republic Act (R.A.) No. 3019.¹¹

Ruling of the Ombudsman

In the administrative case, the Ombudsman found petitioner, together with P/Supt. Mendoza, SPO1 Guiang, PO2 Ompoy, and SPO2 Nagera guilty of grave misconduct. As regards the criminal complaint, the Ombudsman also found probable cause on the charges for robbery extortion and arbitrary detention and recommended the filing of sets of Information against petitioner and the other police officers. The dispositive portion of the Ombudsman Decision reads:

WHEREFORE, PSupt. Crisostomo Mendoza, SPO1 Amor Guiang, PO2 Rodger Ompoy, SPO2 Dante Nagera and PO3 Jerry Ines are hereby found **GUILTY** of grave misconduct and are meted the penalty of Dismissal from the Service with its accessory penalties namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities and bar from taking future civil service examinations.

PROVIDED, that in case respondents are already retired from the government service, the alternative penalty of **FINE** equivalent to **ONE YEAR** salary is hereby imposed, with the same accessory penalties mentioned above.

Let a copy of this Decision be forwarded to the Secretary, Department of Interior and Local Government, and the Chief, Philippine National Police for appropriate action and implementation.

As to the other respondents, namely, Mangorsi Ampaso, PO3 Polito, PO3 Perez and PO2 Vacang, the instant administrative case against them is **DISMISSED**.

SO ORDERED.¹²

Petitioner and the other police officers jointly filed a Motion for Reconsideration, but it was denied in the April 18, 2013 Joint Order.

⁸ OMB-P-A-10-0879-H for Grave Misconduct.

⁹ *Rollo*, pp. 105-107; Crim. Case No. M-QZN-13-03981-CR for Arbitrary Detention.

¹⁰ *Id.* at 108-109; Crim. Case No. R-QZN-13-03320-CR for Robbery Extortion.

¹¹ Anti-Graft and Corrupt Practices Act.

¹² *Id.* at 32-33.

A94

Aggrieved, petitioner filed a Petition for Review before the CA, alleging, among others, that the Ombudsman committed grave abuse of discretion in dismissing him from service without conducting a clarificatory hearing pursuant to Administrative Order No. 17, dated September 13, 2013, which amended Administrative Order No. 07, dated April 10, 1990, entitled "Rules of Procedure in the Office of the Ombudsman." According to petitioner, the conduct of a clarificatory hearing would have enabled the parties to positively identify those who were actually involved in the crime charged. Petitioner also averred that the Ombudsman erred in failing to appreciate the evidence that respondent was a fictitious person.

The CA Ruling

The CA denied the petition.

It reiterated the well-settled rule that no questions shall be entertained if raised for the first time on appeal. In the case at bar, the CA resolved that petitioner was barred from raising the issue on the alleged failure of the Ombudsman to conduct a clarificatory hearing because it was raised for the first time on appeal.¹³

Nevertheless, the CA determined that petitioner was not denied of his right to due process. Under the Ombudsman's Rules of Procedure, the conduct of a clarificatory hearing is not mandatory and the decision of whether or not to conduct a clarificatory hearing is within the discretion of the hearing officer, who is granted plenary investigatory powers.¹⁴

The records belied any allegation of denial of due process. The evidence showed that petitioner was able to file his Counter-Affidavit, together with its supporting evidence. Petitioner was given an opportunity to be heard and defend himself.¹⁵

Anent the issue of whether petitioner was guilty of grave misconduct, the CA ruled in the affirmative. It found that while petitioner was not the one who actually demanded money or received the same from respondent, it was indisputable that he was named as one of the police officers who participated in respondent's illegal arrest.¹⁶

As regards petitioner's claim that there was no direct evidence linking him to the crime, bolstered by the retraction of Ampaso's *Sinumpaang*

¹³ Id. at 35.

¹⁴ Id. at 37.

¹⁵ Id.

¹⁶ Id. at 38.

91

Salaysay and the fact that no such Muhad M. Pangandaman, herein respondent, actually exists, the CA explained that while respondent may have no record of birth with the National Statistics Office and that the latter could not be located at his stated address, these pieces of evidence do not suggest that respondent and his witnesses were fictitious persons. The CA referred to the records that revealed that respondent personally filed his *Sinumpaang Salaysay*, together with his witnesses, at the police station.¹⁷

According to the CA, petitioner's lack of birth records may simply be because his birth was never recorded and the reason he could not be located may be because he might have changed addresses for various causes.

The CA did not give credence to Ampaso's retraction. It explained that affidavits of retraction of testimonies are generally looked at with disfavor due to the probability that they may later be repudiated. In this case, the Affidavit of Retraction was filed only on April 3, 2013, after Ampaso was implicated as respondent in the complaint before the Ombudsman and after the Information for the crime of arbitrary detention and robbery extortion was filed against him.

In administrative proceedings, the quantum of proof required is merely substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and not proof beyond reasonable doubt, which requires moral certainty to justify affirmative findings. Here, the CA resolved that substantial evidence proving petitioner's grave misconduct was present. In the words of the CA:

xxx While he was not specifically named as the one who demanded or received money from the respondent, his participation thereof cannot be denied. From the sworn affidavits of the respondent and his witnesses, it is evident that petitioner was one of those who perpetrated respondent's illegal arrest which paved the way for his co-respondents in the criminal and administrative cases to extort money from the respondent.¹⁸

In sum, the CA held that petitioner's participation in the illegal arrest of respondent constituted grave misconduct, an equivocal corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules.

Petitioner filed a Motion for Reconsideration on November 7, 2014 and Manifestation and Motion on February 5, 2015 before the CA. In his

¹⁷ Id. at 38-39.

¹⁸ Id. at 39.

891

Manifestation and Motion, petitioner informed the appellate court that P/Supt. Mendoza appealed the Ombudsman Decision and filed a separate Petition for Review before the CA, docketed as CA-G.R. No. 131931 (*Mendoza Case*). Petitioner insisted that because the dismissal of the administrative charge against P/Supt. Mendoza by the CA had attained finality, such constituted *res judicata* which should also result in the dismissal of the administrative charge against him.

The CA denied the Motion for Reconsideration. It observed that petitioner failed to inform the CA that the Ombudsman Decision was elevated by P/Supt. Mendoza.

As defense, petitioner pleaded that his failure to inform the CA was due to the following reasons: loss of communication with the other police officers in the Ombudsman Case; the Ombudsman did not inform the CA of the Mendoza Case; no Petition for Consolidation was filed by respondent; and the CA should have been vigilant in the cases filed before it.

In denying the motion, the CA examined the antecedents.

Out of the Ombudsman Decision, five separate petitions were filed before the CA by petitioner,¹⁹ Guiang,²⁰ Nagera,²¹ and Mendoza.²² Out of the five petitions, three petitions were denied by the CA, namely: those of petitioner, Guiang, and Nagera, with Nagera's petition having attained finality. It was only the Mendoza Case which was given due course, while the Ompoy²³ petition remained pending. Despite the fact that five petitions were filed before the CA, petitioner conveniently informed the CA only of the Mendoza Case because it was favorable to his case.

The CA determined that the Mendoza Case did not constitute *res judicata*. The Mendoza Case had yet to become final as its resolution was still pending before this Court. On the contrary, instead of the Mendoza Case as averred by petitioner, it was the Nagera Petition which should be controlling, having attained finality on August 27, 2015.

Nevertheless, all the rulings in the Mendoza, Guiang, and Nagera petitions were all consistent with the CA's decision: that the Ombudsman did not err in rendering its decision. While the CA had ruled differently in the

¹⁹ Now docketed as G.R. No. 224345.

²⁰ Docketed as CA-G.R. SP No. 131911, Denied on March 5, 2015, now docketed as G.R. No. 220335.

²¹ Docketed as CA-G.R. SP No. 132078, Denied on September 30, 2014.

²² Docketed as CA-G.R. SP No. 131931, Granted on October 10, 2014.

²³ CA-G.R. SP. No. 132189.

899

separate petitions, the CA held that “the decisions or rulings of different divisions of the CA do not bind each other.”²⁴

In the end, the CA reminded petitioner that it is the duty of litigants to inform and give prompt notice to the court of similar appeals filed and of any related cases pending before other courts, which petitioner had failed to observe.

As regards petitioner’s averment that there was inconsistency between the *Sinumpaang Salaysay* and the *Karagdagang Sinumpaang Salaysay*, as the *Sinumpaang Salaysay* did not mention petitioner as one of those who perpetrated the crime and it was only in the *Karagdagang Sinumpaang Salaysay* where his name was first mentioned, the CA found no merit in the argument. It opined that there was no inconsistency in both the *Sinumpaang Salaysay* and *Karagdagang Sinumpaang Salaysay*. Although petitioner was not explicitly named in the *Sinumpaang Salaysay*, this was rectified because he was unequivocally mentioned in the *Karagdagang Sinumpaang Salaysay*.

Hence, the present petition, which raises the following arguments:

1. There was no substantial evidence to prove petitioner’s supposed grave misconduct. There was no allegation, much less proof, that petitioner committed the acts complained of;
2. Respondent’s *Sinumpaang Salaysay* excluded petitioner as one of those who arrested him;
3. Respondent’s witnesses, Diamungan and Mampao, did not identify petitioner as one of the perpetrators of the crime. They only mentioned petitioner in their *Karagdagang Sinumpaang Salaysay*, which was undated and unsubscribed. The delay in the execution is highly dubious because it was executed only a month after the *Sinumpaang Salaysay*. Clearly, petitioner’s sudden and belated inclusion was merely an afterthought;
4. Petitioner never waived his right to a formal hearing. While the conduct of a formal hearing in administrative cases is not mandatory, a hearing should have been conducted to ascertain the identity of respondent.

²⁴ See *Quasha Ancheta Pena and Nolasco Law Office v. The Special Sixth Division of the CA*, 622 Phil. 738, 748 (2009); see also *Francisco v. Rojas*, 734 Phil. 122, 141 (2014).

491

Issues

1. Whether or not the CA was correct in denying the petition on the ground that it raised an issue for the first time on appeal;
2. Whether or not the CA Decision in the Mendoza Case constitutes *res judicata*; and
3. Whether or not the CA committed a reversible error in finding petitioner guilty of grave misconduct.

Ruling of the Court

The petition has no merit.

*Issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process*²⁵

Basic rules of fair play, justice, and due process dictate that arguments, issues, points of law, and theories not raised in the trial court may not be raised for the first time on appeal.²⁶ To allow a litigant to raise an issue at a later stage would result in the violation of the adverse party's right to due process who would have no opportunity to present further evidence material to the new theory, which he could have defended had he been aware of such theory at the time of the hearing before the trial court.²⁷

In the case at bench, it is only when the case reached the CA that petitioner raised the issue of the Ombudsman's purported failure to conduct a clarificatory hearing, which petitioner omitted to bring to the attention of the hearing officer. For the Court to review it now would be unfair on the part of respondent who was not given an opportunity to present further evidence and defend his case, amounting to a violation of respondent's right to due process.

The CA Decision in the Mendoza Case does not constitute res judicata

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in

²⁵ *People v. BBB*, G.R. No. 237049, November 28, 2018.

²⁶ *Fernandez v. Amagna*, 617 Phil. 121, 134 (2009).

²⁷ *Id.* at 135.

1891

the former suit.²⁸ For *res judicata* to apply, all the essential requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.²⁹

First, the Court would like to clarify that contrary to the factual findings of the appellate court, there is no pending petition before this Court assailing the CA's ruling dismissing the case against Mendoza. Nevertheless, the CA Decision in the Mendoza Case is not controlling and does not set a precedent in the present case because the aforesaid requisites do not concur. While it may be argued that the Mendoza Case was adjudged on the merits by a court which has jurisdiction over the subject matter and parties, and there is identity of subject matter and cause of action between the Mendoza Case and the present case, still the doctrine of *res judicata* does not apply simply because there is no identity of parties between the two cases. The CA's ruling in the Mendoza Case is limited only to the administrative liability of Mendoza, to the exclusion of the other police officers and petitioner herein.

Petitioner is guilty of grave misconduct

Contrary to petitioner's contention that no direct evidence was established to prove his participation in respondent's illegal arrest, the Court finds in the negative. Findings of fact by the Ombudsman are conclusive when supported by substantial evidence, which refers to "such relevant evidence as a reasonable mind may accept as adequate to support a conclusion."³⁰ By reason of its special knowledge and expertise over matters falling under its jurisdiction, the factual findings of the Ombudsman are generally accorded great weight and respect, if not finality by the courts.³¹

In *Office of the Deputy Ombudsman for Luzon v. Dionisio*,³² the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or

²⁸ *Taganas v. Emuslan*, 457 Phil. 305, 313 (2003).

²⁹ *Id.* at 311-312.

³⁰ *Office of the Deputy Ombudsman for Luzon v. Dionisio*, 813 Phil. 474, 487 (2017).

³¹ *Id.*

³² *Id.*

A91

willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.”³³

In the case at bench, the records reveal that the acts of petitioner constitute grave misconduct, and not just simple misconduct.

First, it cannot be denied that petitioner was one of the police officers who effected respondent’s illegal arrest. While he was not explicitly named in the *Sinumpaang Salaysay* and was merely generally alluded to, he was expressly mentioned in the *Karagdagang Sinumpaang Salaysay* as the one who perpetrated the illegal arrest. The fact that he was not specifically mentioned in the *Sinumpaang Salaysay* does not negate his participation.

In the *Sinumpaang Salaysay*, it stated: “*ang mga pulis kasama si Major Dante [Nagera] na nanghuli kay Muhad Pangandaman.*”³⁴ The general reference to the police officers who participated in the illegal arrest was rectified in the *Karagdagang Sinumpaang Salaysay*, to wit: “*Don sa Police Station, si SPO2 Dante [Nagera] at kasama niya ang mga pulis na sina PO3 Jerry [Ines], PO2 Ompoy, PO3 Polito, PO3 Perez, PO2 Vacang and PO2 Amor Guiang lahat nakatalaga sa Police Station 6, Quezon City na humuli kay Muhad Pangandaman.*”³⁵

Thus, as correctly observed by the CA, there is no inconsistency in the testimony of respondent or his witnesses.

Second, the act of arresting respondent without any legal ground implies a vile intent and not a mere error of judgment to violate the law, and if it were not for petitioner’s position and official duty as a police officer, it would not have been possible for him to perform the illegal arrest. The act has a direct relation to and is connected with the performance of his official duties, amounting to maladministration or willful failure to discharge the duties of the office.

³³ Id.

³⁴ *Rollo*, p. 47.

³⁵ Id.

475

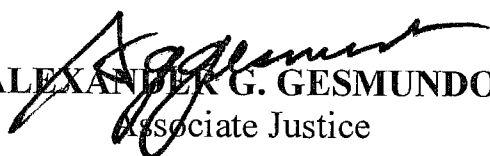
Ampaso's retraction of his testimony is immaterial. As correctly ruled by the CA, affidavits of retraction of testimonies are generally looked at with disfavor because they can easily be secured from witnesses, usually through intimidation or for a monetary consideration.³⁶

The factual circumstances surrounding Ampaso's recantation are highly suspect. Based on the records, the retraction occurred on April 3, 2013, a few months after Ampaso was implicated as a respondent in the administrative complaint filed before the Ombudsman and in the Information for the crime of arbitrary detention and robbery extortion before the Regional Trial Court on January 21, 2013.

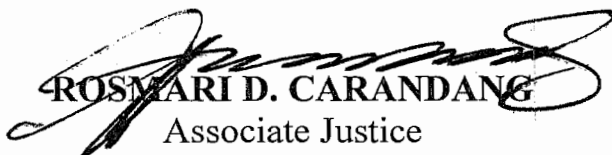
Finally, petitioner's averment that respondent is a fictitious person has no merit. The fact that he could not be located does not mean that his existence is spurious. The evidence proving his existence cannot overcome the convincing proof that respondent, together with his witnesses, personally filed their affidavits and pleadings at the police station.

WHEREFORE, the petition is **DENIED**. The October 14, 2014 Decision and April 25, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 132694 are **AFFIRMED**. PO3 Jerry Ines is hereby ordered to suffer the penalty of dismissal from service with its accessory penalties namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities, and bar from taking future civil service examinations.

SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

³⁶ *People of the Philippines v. P/Supt. Lamsen*, 721 Phil. 256, 259 (2013).

WE CONCUR:**MARVIC M.V.F. LEONEN**Associate Justice
Chairperson**ROSMARI D. CARANDANG**

Associate Justice

**MARIO V. LOPEZ**

Associate Justice

**SAMUEL H. GAERLAN**

Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARVIC M.V.F. LEONEN**

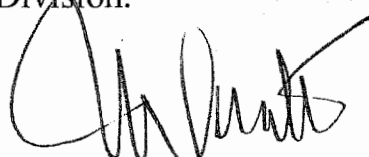
Associate Justice

Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY

**DIOSDADO M. PERALTA**

Chief Justice

Mig-DCCB-H
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

NOV 03 2020

