

## THIRD DIVISION

[ G.R. No. 224345, September 02, 2020 ]

**PO3 JERRY INES, PETITIONER, VS. MUHAD M. PANGANDAMAN,  
RESPONDENT.**

### R E S O L U T I O N

**GESMUNDO, J.:**

This is an appeal by *certiorari*<sup>[1]</sup> seeking to reverse and set aside the October 14, 2014 Decision<sup>[2]</sup> and April 25, 2016 Resolution<sup>[3]</sup> 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 Decision<sup>[4]</sup> 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.*"

#### **Antecedents**

On January 11, 2010, at around 9:30 p.m., Muhad M. Pangandaman (*respondent*),<sup>[5]</sup> 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 Rodger<sup>[6]</sup> Ompoy (*PO2 Ompoy*), SPO2 Dante Nagera<sup>[7]</sup> (*SPO2 Nagera*), and petitioner, demanded from respondent the sum of Two Hundred Thousand Pesos (P200,000.00).

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 (P100,000.00). 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 mgapulis 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[.]*"

Two (2) cases were filed against petitioner and his team who participated in the arrest of respondent, namely: (1) an administrative case<sup>[8]</sup> for grave misconduct; and (2) criminal cases<sup>[9]</sup> for robbery extortion,<sup>[10]</sup> unlawful arrest, arbitrary detention, and violation of Republic Act (R.A.) No. 3019.<sup>[11]</sup>

#### *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.**<sup>[12]</sup>

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

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.<sup>[13]</sup>

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.<sup>[14]</sup>

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.<sup>[15]</sup>

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.<sup>[16]</sup>

As regards petitioner's claim that there was no direct evidence linking him to the crime, bolstered by the retraction of Ampaso's *Sinumpaang 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.<sup>[17]</sup>

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.<sup>[18]</sup>

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 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,<sup>[19]</sup> Guiang,<sup>[20]</sup> Nagera,<sup>[21]</sup> and Mendoza.<sup>[22]</sup> 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 Ompoy<sup>[23]</sup> 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 separate petitions, the CA held that "the decisions or rulings of different divisions of the CA do not bind each other."

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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.

### **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**