

## THIRD DIVISION

[ G.R. No. 201117, January 22, 2020 ]

**ROMEO A. BELTRAN AND DANILO G. SARMIENTO, PETITIONERS,  
VS. SANDIGANBAYAN (SECOND DIVISION), OFFICE OF THE  
OMBUDSMAN, ASST. SPECIAL PROSECUTOR III JENNIFER  
AGUSTIN-SE, OFFICE OF THE SPECIAL PROSECUTOR OFFICE OF  
THE DEPUTY OMBUDSMAN FOR LUZON, AND COMMISSION ON  
AUDIT REPRESENTED BY DANILO SISON, ROMEO DE GUZMAN,  
AND LUIS DIMOLOY (COA REGIONAL OFFICE NO. 02  
TUGUEGARAO CITY, CAGAYAN), RESPONDENTS.**

### DECISION

**LEONEN, J.:**

The Ombudsman's and his or her Deputies' power of determining probable cause to charge an accused is an executive function. They must be given a wide latitude in performing this duty. Absent any showing of grave abuse of discretion, this Court will not disturb their determination of probable cause.

This Court resolves a Petition for Certiorari<sup>[1]</sup> challenging the Decision<sup>[2]</sup> of the Office of the Deputy Ombudsman for Luzon (Office of the Deputy Ombudsman) and the Office of the Special Prosecutor's Order<sup>[3]</sup> that allegedly upholds it. The Office of the Deputy Ombudsman found Romeo A. Beltran (Beltran) guilty of serious dishonesty and ordered his dismissal from government service, and recommended that criminal charges be filed against him and Danilo G. Sarmiento (Sarmiento).

This case arose from a Complaint that the Commission on Audit filed before the Office of the Deputy Ombudsman against the following: (1) Alfredo M. Castillo, Jr. (Mayor Castillo), then mayor of Alfonso Castañeda. Nueva Vizcaya; (2) Beltran, then its municipal engineer; and (3) KAICO 25 Realty and Development Corporation (KAICO), owned by Sonny L. Salba and represented by Sarmiento.

The Commission on Audit alleged that Mayor Castillo had entered into a P10,000,000.00-worth Contract Agreement with KAICO for the construction of the Bato-Abuyo Farm-to-Market Road in Alfonso Castañeda.<sup>[4]</sup>

Auditors from the Commission on Audit later observed that only 3.78% of the project was accomplished despite the entire P10,000,000.00 being disbursed and paid to KAICO.<sup>[5]</sup> A breakdown of the project's deficiencies was revealed in a January 2, 2003 Inspection Report prepared by Danilo N. Sison (Sison), a technical audit specialist at the Commission on Audit.<sup>[6]</sup>

On November 3, 2003, Sison and the other auditors executed a Joint Affidavit, confirming that the project was certified by Beltran as 100% and was fully paid on

July 31, 2002,<sup>[7]</sup> when only 3.78% was accomplished. They recommended that the appropriate cases be filed against Mayor Castillo, Beltran, and KAICO's officers.<sup>[8]</sup> Sison later submitted a Position Paper, reiterating the need to file criminal and administrative charges against them.<sup>[9]</sup>

For his part, Beltran insisted that he was not a disbursing officer and that he had never handled the project's funds. He added that he signed the Project Acceptance, which certifies that the project is 100% complete, based on what he saw and reported. He invoked the presumption of regularity in the discharge of official duties.<sup>[10]</sup>

To bolster his claim, Beltran pointed to the Findings and Observations of the Department of the Interior and Local Government Provincial Fact-Finding Team (Fact-Finding Team), indicating the project's progress.<sup>[11]</sup> He also relied on the Certifications of Barangay Captains Rosie Sanchez (Barangay Captain Sanchez) of Barangay Batu and Milton P. Suaking (Barangay Captain Suaking) of Barangay Abuyo, dated November 6, 2003 and August 1, 2005, respectively.<sup>[12]</sup> Both of them stated that the Batu-Abuyo Road was fully built and was being used by farmers as an alternative road.<sup>[13]</sup>

On January 21, 2010, the Office of the Deputy Ombudsman rendered the assailed Decision,<sup>[14]</sup> ruling that Beltran should be held administratively liable for certifying that the project was 100% complete when only 3.78% was accomplished at the time he signed the Project Acceptance.<sup>[15]</sup>

The Office of the Deputy Ombudsman found that Beltran's reliance on the barangay captains' Certifications was misplaced because they were issued much later than the Commission on Audit's Inspection Report. Barangay Captain Suaking's Certification only came 10 months after the inspection, and Sanchez's Certification two (2) years and seven (7) months after. To the Office of the Deputy Ombudsman, these documents may not accurately reflect the condition of the project when the inspection was conducted.<sup>[16]</sup>

Moreover, the Office of the Deputy Ombudsman found that the Certifications only contained general descriptions of the road, as compared to the Inspection Report, which contained more technical descriptions of the project's deficiencies.<sup>[17]</sup>

As to the Findings and Observations of the Fact-Finding Team, the Office of the Deputy Ombudsman found that it did not indicate the percentage of the actual accomplished work as compared to the Inspection Report. It also noted that the Fact-Finding Team reported that "the road is already covered with vegetative growth for *non-use* and only few have the courage to pass through it."<sup>[18]</sup>

Hence, for Beltran failure to refute the claim that his certification in the Project Acceptance was false,<sup>[19]</sup> the Office of the Deputy Ombudsman held that he committed fraud or falsification that caused undue injury or serious damage to Alfonso Castañeda worth P9,622,000.00. This amount represented the unaccomplished portion of the project.<sup>[20]</sup>

Accordingly, the Office of the Deputy Ombudsman found Beltran guilty of serious dishonesty and dismissed him from government service. It also recommended that criminal charges for violations of Section 3(e) of Republic Act No. 3019 and falsification of public document under Article 171(4) of the Revised Penal Code be filed against Beltran and Sarmiento. However, the administrative charges against Sarmiento and Mayor Castillo were dismissed.<sup>[21]</sup>

Only Beltran moved for reconsideration.<sup>[22]</sup>

Upon the Office of the Deputy Ombudsman's Decision, two (2) Informations for the recommended violations were filed before the Sandiganbayan on July 28, 2011.<sup>[23]</sup> Beltran and Sarmiento later received a Notice from the Sandiganbayan selling their arraignment. However, they manifested that a Motion for Reconsideration was pending before the Office of the Deputy Ombudsman and prayed that the arraignment be postponed.<sup>[24]</sup>

Thus, the Sandiganbayan reset the arraignment and instructed the Office of the Special Prosecutor to comment on Beltran's Motion for Reconsideration.<sup>[25]</sup>

On February 1, 2011, the Office of the Special Prosecutor issued the assailed Order.<sup>[26]</sup> It declared that the Office of the Deputy Ombudsman did not err when it gave credence to the Commission on Audit's Inspection Report over the Findings and Observations of the Fact-Finding Team and the barangay captains' Certifications.<sup>[27]</sup>

However, this Order did not contain a dispositive portion. Instead, it contained a prayer at the end, which read:

**WHEREFORE**, premises considered, there being no merit for the Motion For Reconsideration filed by Respondent Beltran, the Prosecution respectfully prays that the same be **DENIED**.

Other just and equitable relief under the law are likewise prayed for.<sup>[28]</sup>  
(Emphasis in the original)

Thinking that this Order was a denial of Beltran's Motion for Reconsideration, Beltran and Sarmiento filed before the Office of the Special Prosecutor a Manifestation and Motion<sup>[29]</sup> praying that the Informations filed in the Sandiganbayan be withdrawn. They claimed that the filing of the informations was premature as they still had available remedies under the Rules of Procedure of the Office of the Ombudsman to question the finding of probable cause.<sup>[30]</sup> Beltran and Sarmiento furnished the Sandiganbayan with a copy of this Manifestation and Motion.<sup>[31]</sup> In view of this, the Sandiganbayan again deferred the arraignment.<sup>[32]</sup>

Later realizing that the Order did not contain a dispositive portion but a prayer, Beltran and Sarmiento filed a Motion to Defer Arraignment.<sup>[33]</sup> They argued that the Motion for Reconsideration remained pending as the Office of the Special Prosecutor's Order was, in essence, a comment on the Motion for Reconsideration.<sup>[34]</sup>

In its Comment/Opposition,<sup>[35]</sup> the Office of the Special Prosecutor argued that its

assailed Order was actually a denial of the Motion for Reconsideration and not a mere comment.<sup>[36]</sup> It insisted that as the Office of the Ombudsmans prosecuting arm, it "takes over whatever pending incident that may arise relative to the case already filed with the court."<sup>[37]</sup> This was why it acted on the Motion for Reconsideration once it was forwarded by the Office of the Deputy Ombudsman.<sup>[38]</sup>

The Office of the Special Prosecutor further argued that in manifesting their intention to pursue other legal remedies to question the finding of probable cause, Beltran and Sarmiento clearly showed that they treated the Order as a denial of the Motion for Reconsideration.<sup>[39]</sup>

On April 10, 2012, petitioners Beltran and Sarmiento filed this Petition for Certiorari; <sup>[40]</sup> praying, among others, that the Decision of the Office of the Deputy Ombudsman and the Order of the Office of the Special Prosecutor be nullified.<sup>[41]</sup>

With this case still pending, the Office of the Special Prosecutor rendered a May 9, 2012 Order<sup>[42]</sup> expressly denying petitioner Beltran's Motion for Reconsideration for lack of merit. Its dispositive portion read:

**WHEREFORE,** premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.<sup>[43]</sup> (Emphasis in the original)

The Order was approved by then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) on June 26, 2012, as shown on the last page of the ruling where her signature appears.<sup>[44]</sup>

On August 22, 2012, respondents Office of the Ombudsman and Office of the Special Prosecutor filed their Comment.<sup>[45]</sup> to which petitioners filed their Reply on December 11, 2012.<sup>[46]</sup>

On March 6, 2013, this Court gave due course to the Petition and required the parties to submit their respective memoranda.<sup>[47]</sup>

On May 24, 2013. petitioners filed their Memorandum.<sup>[48]</sup> Respondents likewise filed their Memorandum<sup>[49]</sup> on May 29, 2013.

For their part, petitioners mainly accuse both respondents Office of the Special Prosecutor and Office of the Deputy Ombudsman of committing grave abuse of discretion in their rulings.

Petitioners argue that respondent Office of the Special Prosecutor gravely abused its discretion in initially insisting that its Order was a denial of the Motion for Reconsideration, when it had no power to do so. They first point out that the assailed Order contains not a dispositive portion, but a mere statement praying that Beltran's Motion be denied.<sup>[50]</sup> Neither was the Order approved by the Ombudsman, but was just "noted" by the Prosecution Bureau Director. Petitioners also claim that the Order, despite being titled so, served as a comment or opposition that essentially contained a discussion and refutation of their assignment of errors.<sup>[51]</sup>

Moreover, petitioners point out that Section 11(4) of Republic Act No. 6770, which enumerates the Office of the Special Prosecutor's powers, does not provide that it can deny a motion for reconsideration.<sup>[52]</sup> Under the same provision, they point out, the office is a mere component of the Office of the Ombudsman, which in turn exercises supervision and control over it.<sup>[53]</sup>

Thus, petitioners claim that when Assistant Special Prosecutor Jennifer Agustin-Se, the officer tasked with handling the prosecution of their cases, also reviewed and supposedly denied the Motion for Reconsideration. there was a denial of due process because she acted both as prosecutor and the reviewing body of the Informations against petitioners.<sup>[54]</sup>

Petitioners also claim that respondents changed their position after this Petition for Certiorari had been filed. They argue that in respondents' Comment, they admitted that it was only on June 26, 2012 that the Ombudsman approved a new Order dated May 9, 2012 recommending the Motion for Reconsideration's denial. To petitioners, this goes against respondents' earlier contention that the February 1, 2011 Order was already the denial of the Motion. Just the same, petitioners insist that the Ombudsman's approval was belated, and could not change the fact that respondent Office of the Special Prosecutor had committed grave abuse of discretion.<sup>[55]</sup>

In any case, petitioners claim that respondent Office of the Deputy Ombudsman gravely abused its discretion when it completely disregarded their evidence, showing that the project had been completed, and instead found probable cause to file the criminal charges.<sup>[56]</sup>

Petitioners maintain that the barangay captains' Certifications should have been given probative value as they were in a better position to state whether the project was accomplished, being in the locality where the project was built.<sup>[57]</sup> They also claim that the Certifications' late issuance does not detract from their contents' veracity-"that the road was actually completed and being used."<sup>[58]</sup>

Petitioners also argue that respondent Office of the Deputy Ombudsman improperly dismissed the Fact-Finding Team's Findings and Observations for not indicating the percentage of actual work accomplished. They claim that respondent Office of the Deputy Ombudsman only quoted select portions of the Findings and Observations, which, when read in full, would negate the Commission on Audit's Inspection Report.<sup>[59]</sup>

Petitioners further fault respondent Office of the Deputy Ombudsman for completely relying on the Inspection Report, which they claim should not be given credence for being highly questionable.<sup>[60]</sup> They claim that the Commission on Audit did not have the original plans and specifications of the project when it conducted the inspection, which makes its evaluation baseless.<sup>[61]</sup> It likewise did not coordinate with the relevant authorities from the municipality, who would have provided them with the project's specifics, witnessed the inspection, and explained their side, petitioners point out.<sup>[62]</sup>

Thus, petitioners pray that the assailed Decision and Order issued by respondents