

SECOND DIVISION

[G.R. No. 209375, June 10, 2020]

**FRANCISCO G. MAGAT AND EDGARDO G. GULAPA, PETITIONERS,
VS. DANIEL C. GALLARDO, RESPONDENT.**

D E C I S I O N

INTING, J.:

This is a Petition^[1] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to review and set aside the following Decision and Resolutions of the Court of Appeals (CA) in CA-G.R. SP. No. 83745, to wit: (1) Decision^[2] dated November 29, 2011 denying the petition for review of the Decision^[3] dated August 6, 2003 and the Order^[4] dated March 30, 2004 of the Office of the Deputy Ombudsman for Luzon in OMB-L-A-02-0681-J finding Francisco G. Magat (Magat) and Edgardo G. Gulapa (Gulapa) (collectively, petitioners) guilty of Dishonesty in the administrative aspect of the criminal case; (2) Resolution^[5] dated September 12, 2012 denying the motion for reconsideration; and (3) Resolution^[6] dated August 29, 2013 noting without action the filing of a Motion for a Review or Reconsideration of the Resolution Promulgated on September 12, 2012.^[7]

The Antecedents

On October 22, 2002, Daniel C. Gallardo (respondent), in his capacity as then Vice Mayor of the Municipality of Candaba, Pampanga accused herein petitioners, then members of the *Sangguniang Bayan*, of Grave Misconduct for having requested and received cash advances in the amount of P6,600.00 each from the Municipality of Candaba for the purpose of paying their travel expenses for the 5th National Congress (National Congress) of the Philippine Councilors League (PCL) held at the World Trade Center in Pasay City on February 22, 2002.^[8]

Respondent received an information that petitioners were not among those who attended the National Congress. Allegedly, to conceal their misrepresentation, petitioners conspired to pull out the official receipts issued by PCL and replaced them with falsified ones. Such acts are punishable under the Revised Penal Code under *Estafa* and Falsification of Public Document.^[9]

On the other hand, petitioners justified the cash disbursement as in the nature of a loan or *mutuum* in which the use and consumption thereof need not necessarily redound to the intended purpose, but may also be spent for other functions to which the recipient had full discretion. Petitioners then prayed for the dismissal of the charge of *Estafa*.^[10]

Petitioners likewise alleged that the crime of Falsification of Public Documents would

not lie against them because the receipts in question were private in nature. They raised the argument that the documents were spurious, only because the copies thereof appeared to have been falsified, while the original documents remained unimpaired.^[11]

In his Reply-Affidavit,^[12] respondent alleged that the original duplicate copies in the custody of PCL did not register the names of petitioners as among those who were issued official receipts. Jaime S. Tan^[13] (Tan), who was then the PCL Accounting Clerk, noticed the variance between the original receipts and the specimens presented by petitioners for liquidation purposes such as the font used in the alleged spurious receipts appearing larger and of different type compared to the ones in his custody.^[14] Tan also revealed that the Official Receipts with Serial Numbers 5862 and 5863 from PCL were later furnished to petitioners upon their behest with the concurrence of National Congress President Salvador D. Pangilinan. Consequently, respondent Gallardo advised against relying on the certificates of appearance/attendance of petitioners, saying that these could easily be secured by anyone from the Office of the Councilors League.^[15]

In their Rejoinder,^[16] petitioners belied the allegations in the Reply-Affidavit and criticized respondent for accusing six other councilors as their co-conspirators and for failing to exhaust administrative remedies available to them, *i.e.*, bypassing the duties of the local accountant and auditor to examine and settle the accounts and financial transactions of the Municipality. They also reiterated their previous claim that the cash advances they received from the Municipality were in the nature of loans and as such, subject only to the obligation of reimbursing the equivalent amount if the official business for which they were issued was not pursued. Petitioners further denied having falsified much less intervened in the preparation of the questioned receipts in their capacity as public officials saying, if at all, the offense should be Falsification of Private Document under Article 172 of the Revised Penal Code. Nevertheless, petitioners averred that the indictment would not prosper because the element of "damage" or the "intent to cause it" was lacking.

Regarding the two receipts issued in petitioners' names, they maintained that these were furnished in the ordinary course of business and should be given full faith and credence. However, since the receipts were issued belatedly, petitioners suggested that an audit investigation should be conducted to pinpoint the cause of the "retroactive date of the PCL seminar" and to implead Tan as a party respondent in the case. On the matter of attendance, petitioners relied on the attestations of six of their fellow councilor members who were in the conference with them.^[17]

In the Resolution^[18] dated January 3, 2003, Graft Investigation Officer I Remedios E. Granada (GIO I Granada) recommended the dismissal of the complaint for *Estafa* and Falsification against the petitioners. The pertinent portions of the Resolution are quoted herein as follows:

The certificates of attendance issued by the Philippine Councilors League belied the allegation of non-attendance (to the Congress) against the respondents. Hence, no misrepresentation to speak of.

Apart from the certifications, the sworn-declarations from the councilors

who attended the National Congress, confirming the respondents attendance renders the complainants Claim false.

With regard to the falsification charges against the respondent, we find the same not substantiated by the evidence on record.

It must be noted that the basis of complainants' falsification charges was the alleged forgery of the signatures of the Treasurer of the Philippine Councilors League. However, this bare allegation of complainant cannot be given weight amid the fact that respondents have submitted proof of payment. Moreover, it bears stressing that in the prosecution of forgery, the burden of proof lies on the one who alleges forgery.^[19]

Respondent filed a motion for reconsideration of the Resolution, but the Office of the Deputy Ombudsman for Luzon denied it. Respondent then pursued the administrative aspect of the criminal case before the Office of the Deputy Ombudsman for Luzon.

In the Decision^[20] dated August 6, 2003, GIO II Ismaela B. Boco observed that there was a real attempt on the part of petitioners to liquidate their cash advances by submitting falsified receipts issued by the PCL and found them guilty of dishonesty. The dispositive portion of the Decision reads:

WHEREFORE, PREMISES CONSIDERED, respondents FRANCISCO MAGAT and EDGARDO G. GULAPA are hereby found guilty of Dishonesty for which the penalty of suspension for six (6) months without pay is recommended pursuant to Sec. 10, Rule III of AO No. 07, this Office, in relation to Sec. 25 of R.A. 6770.

SO DECIDED.^[21]

Petitioners filed a motion for reconsideration and/or reinvestigation. In an Order^[22] dated March 30, 2004, Graft Investigation & Prosecution Officer II Adoracion A. Agbada ruled that the findings of petitioners' guilt for Dishonesty were clearly supported by the facts and evidence adduced in the case. However, in view of the fact that the suspension of local elective official was prohibited under Section 261, sub-paragraph (x) of the Omnibus Election Code, during an election period which officially started on December 15, 2003 and ended on June 9, 2004, per COMELEC Resolution No. 6420 dated November 25, 2003, there now existed a sufficient ground to modify the penalty into a fine, equivalent to petitioners' respective six months salary.^[23]

On appeal *via* Rule 43, petitioners raised the following issues before the Court of Appeals, to wit:

- I. Whether or not the respondents were denied procedural due process;
- II. Whether or not the Order denying the Motion for Reconsideration/Reinvestigation was one-sided, biased and ill-conceived;