

## SECOND DIVISION

**[ G.R. No. 207355, February 03, 2016 ]**

**JENNIFER A. AGUSTIN-SE AND ROHERMIA J. JAMSANI-RODRIGUEZ, PETITIONERS, VS. OFFICE OF THE PRESIDENT, REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ORLANDO C. CASIMIRO, OVERALL DEPUTY OMBUDSMAN, OFFICE OF THE OMBUDSMAN, AND JOHN I.C. TURALBA, ACTING DEPUTY SPECIAL PROSECUTOR, OFFICE OF THE SPECIAL PROSECUTOR, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition for review on certiorari<sup>[1]</sup> to set aside the 29 November 2012 Decision<sup>[2]</sup> and the 23 May 2013<sup>[3]</sup> Resolution of the Court of Appeals upholding the 14 June 2011<sup>[4]</sup> Decision of the Office of the President (OP) to dismiss the complaint of Jennifer A. Agustin-Se and Rohermia J. Jamsani-Rodriguez (petitioners) against respondents Orlando C. Casimiro (Casimiro) and John I.C. Turalba (Turalba).

#### The Facts

Petitioners are Assistant Special Prosecutors III of the Office of the Ombudsman, who have been assigned to prosecute cases against Lt. Gen. (Ret.) Leopoldo S. Acot (Acot), Bgen. (Ret.) Ildelfonso N. Dulinayan (Dulinayan) and several others before the Sandiganbayan for alleged ghost deliveries of assorted supplies and materials to the Philippine Air Force amounting to about Eighty Nine Million Pesos (P89,000,000.00).

Sometime in early 1995, the Judge Advocate General's Office of the Armed Forces of the Philippines filed a complaint before the Ombudsman against Acot, Dulinayan and several others which was eventually docketed as OMB-AFP-CRIM-94-0218. In a Resolution dated 12 April 1996,<sup>[5]</sup> Ombudsman Investigators Rainier C. Almazan (Almazan) and Rudifer G. Falcis II (Falcis) recommended the filing of Informations against Acot, Dulinayan, and several others for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019 [RA No. 3019]) and/or for Malversation through Falsification. Casimiro was then the Director of the Criminal and Administrative Investigation Division of the Office of the Ombudsman and the immediate supervisor of Almazan and Falcis. Casimiro concurred with and signed the 12 April 1996 Resolution and indorsed the same to Bgen. (Ret.) Manuel B. Casaclang, then Casimiro's immediate superior.

In a Memorandum dated 10 July 1996,<sup>[6]</sup> then Special Prosecution Officer III

Reynaldo L. Mendoza recommended the modification of the 12 April 1996 Resolution to charge Acot, Dulinayan and several others only with the violation of Section 3(e) of RA No. 3019. In a Memorandum dated 12 January 1998,<sup>[7]</sup> Special Prosecutor Leonardo Tamayo (Tamayo) recommended that the charges against Acot and Dulinayan be dismissed for lack of evidence. Affirming the recommendation of Tamayo, on 2 March 1998, Ombudsman Aniano A. Desierto approved the 12 April 1996 Resolution with the modification to dismiss the charges against Acot and Dulinayan.

In a Memorandum dated 29 April 2005,<sup>[8]</sup> Nolasco B. Ducay and Melita A. Cuasay, record officers of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers (OMB-MOLEO), brought to the attention of Casimiro (who was then already the Deputy Ombudsman for MOLEO having been appointed on 16 December 1999) that the main folder containing the 12 April 1996 Resolution could not be located despite the records having been returned to the OMB-MOLEO on 6 March 1998. The discovery of the missing folder was made when Col. Proceso I. Sabado and Lt. Jose R. Gadin, who were co-respondents of Acot and Dulinayan, applied for a clearance with the Office of the Ombudsman. Due to the delay in the action on the 12 April 1996 Resolution and inexplicable loss of the main folder, Almazan and Falcis, in a Memorandum dated 7 July 2005,<sup>[9]</sup> strongly recommended a thorough review of the case. Casimiro forwarded the 7 July 2005 Memorandum to Ombudsman Simeon V. Marcelo who directed the Office of Legal Affairs (OLA) to study the records and submit a recommendation.

In a Memorandum dated 25 June 2007,<sup>[10]</sup> the OLA noted that the 12 April 1996 Resolution had "no force and effect because it was never promulgated." The OLA recommended, among others, the filing of Informations against Acot, Dulinayan and several others. In a Memorandum dated 23 February 2009, Assistant Special Prosecutor II Terence S. Fernando of the Office of the Ombudsman Proper recommended the approval of the OLA's Memorandum. On 3 March 2009, acting pursuant to delegated authority, Casimiro approved both the 25 June 2007 and 23 February 2009 Memoranda. The Informations were thereafter filed against Acot, Dulinayan and several others with the Sandiganbayan.

Acot and Dulinayan filed their respective Motions to Quash/Dismiss and to Defer Arraignment mainly on the grounds that: (1) the right of the State to prosecute had already prescribed; and (2) given the amount of time the case was filed after the preliminary investigation was started almost 15 years, their right to speedy disposition of case had been violated.<sup>[11]</sup> Dulinayan further alleged that a clearance had been issued by the Office of the Ombudsman stating that there were no pending cases against him. The Sandiganbayan required petitioners, the assigned prosecutors for this case, to comment on the motions filed by Acot and Dulinayan.

To determine the veracity of the statement of Dulinayan that he had been issued a clearance stating that there are no pending cases against him, petitioners confirmed with the Public Assistance Bureau of the Office of the Ombudsman whether such clearance had been issued.<sup>[12]</sup> Moreover, to determine the events that transpired after the modification of the 12 April 1996 Resolution, petitioners requested certified machine copies of the docket entries with the Records Division.<sup>[13]</sup> While the issuance of the clearance was timely confirmed, the certified machine copies of the

docket entries were delayed; and thus, petitioners were constrained to file several Motions for Extension of Time to File Comment/Opposition to the Motions filed by Dulinayan and Acot.

Based on their evaluation of the records, petitioners found that there were procedural lapses in the handling of the cases, which they attributed to Casimiro. Thus, instead of filing the required Comment and/or Opposition with the Sandiganbayan, petitioners submitted a Memorandum dated 5 January 2010,<sup>[14]</sup> which contained their findings against Casimiro. This Memorandum, while addressed to then Special Prosecutor Dennis M. Villa-Ignacio, was submitted to Turalba, who was the Officer-in-Charge, Director, Prosecution Bureau V. Turalba, however, merely attached the said Memorandum as part of the records and thereafter relieved petitioners from the cases, alluding that they were remiss in their duty to file the necessary Comment and/or Opposition with the Sandiganbayan.<sup>[15]</sup> Turalba filed his own Comment and/or Opposition which prompted petitioners to seek the approval of Villa-Ignacio of their version of the draft Comment and/or Opposition, which they eventually filed with the Sandiganbayan.<sup>[16]</sup> However, the Informations against Acot, Dulinayan and several others were subsequently dismissed by the Sandiganbayan for violation of the accused's right to speedy disposition of the case.

In the meantime, Turalba furnished Casimiro with the 5 January 2010 Memorandum of petitioners. Casimiro thereafter required petitioners to explain why they should not be held criminally and administratively liable for insubordination, gross neglect and conduct prejudicial to the best interest of the service.<sup>[17]</sup> Instead of responding to Casimiro, petitioners submitted a Memorandum dated 20 January 2010 to Villa-Ignacio explaining their actions.<sup>[18]</sup>

Thereafter, on 4 February 2010, Casimiro filed a Complaint<sup>[19]</sup> against petitioners with the Internal Affairs Board (IAB) of the Office of the Ombudsman for the crime of libel and Section 3(e) of RA No. 3019, and administratively, for grave misconduct, conduct prejudicial to the best interest of the service, gross neglect of duty, and insubordination. Pending investigation, petitioners were placed under preventive suspension.

On 3 November 2010, petitioners filed their own Complaint<sup>[20]</sup> before the OP, alleging that Casimiro and Turalba committed the following administrative infractions: (1) grave misconduct, (2) gross negligence; (3) oppressions, (4) conduct grossly prejudicial to the best interest of the service; (5) violation of the rules on confidentiality; (6) violation of Office Order No. 05-18, and Office Order No. 05-13; and (7) violation of Section 35 of RA No. 6770,<sup>[21]</sup> amounting to dishonesty and gross misconduct.<sup>[22]</sup>

### **The Ruling of the Office of the President**

In a Decision dated 14 June 2011,<sup>[23]</sup> the OP dismissed the complaint filed against Casimiro and Turalba. On the allegation that Casimiro caused the delay in the investigation of the cases against Acot, Dulinayan and several others, the OP ruled that:

This Office finds that the delay in the preliminary investigation of OMB-AFP-CRM-94-0218 could not be validly attributed to respondent Casimiro, whose participation in the disposition of the case is his initial review as Director, submission of the Memorandum of 7 July 2005 and the Information in accordance with the Resolution dated 12 April 1996, as approved by Ombudsman Desierto, and his approval of the final resolution of the case by delegated authority and of the various Informations for violation of Section 3(e) of Republic Act No. 3019 against the accused, now docketed as SB-09-CRM-0184 to 0189 of the Sandiganbayan.

This Office agrees with respondent Casimiro that as a mere Director of a Bureau of the Office of the Deputy Ombudsman for Military and other Law Enforcement Offices and who was thereafter appointed Deputy Ombudsman only on December 16, 1999, he had every right to presume regularity in the investigation of the case.

In fact, no less than the Office of Legal Affairs of the Office of the Ombudsman, concluded that the Resolution dated 12 April 1996 had never become final.

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No delay, therefore, may be attributed to respondent Casimiro who came across the records of the case nine (9) years after he signed the Resolution dated 12 April 1996 recommending the filing of informations to his superior, if the Office of the Ombudsman itself never considered that the Resolution dated 12 April 1996 as final and executory.<sup>[24]</sup>

On the issue of whether Casimiro and Turalba violated the rules on confidentiality, the OP stated:

The Memorandum dated January 5, 2010 is not confidential or classified information within the ambit of R.A. No. 6713 and R.A. No. 3019.

Therefore, Director Turalba could not be faulted for his act of furnishing a copy thereof to respondent Casimiro who was the subject of the investigation which the complainants sought to be conducted. On the other hand, respondent Casimiro cannot be blamed for issuing the Memorandum dated January 18, 2010 directing complainants to explain their action, in view of the latter's insinuation that it was by his fault that the preliminary investigation of OMB-AFP-CRM-94-0218 had been prolonged.<sup>[25]</sup>

On 2 November 2011, the OP denied the Motion for Reconsideration filed by petitioners.<sup>[26]</sup> On 28 November 2011, they filed a petition for review on certiorari under Rule 43 of the Rules of Court with the Court of Appeals to set aside the decision of the OP.

### **The Ruling of the Court of Appeals**

In a Decision dated 29 November 2012, the Court of Appeals affirmed the decision

rendered by the OP. The Court of Appeals held:

As correctly raised by respondent Casimiro, the delay, if any, was necessitated by the layers of preliminary investigation and multiple reviews conducted by the concerned authorities in the Office of the Ombudsman over a period of time under different leaderships starting from Ombudsman Desierto, to Ombudsman Marcelo and thereafter, to Ombudsman Gutierrez. **It must be emphasized that for his part, respondent Casimiro concurred with the findings of his subordinates, Almazan and Falcis, who conducted the preliminary investigation against Acot and company, and who issued the 12 April 1996 Resolution recommending the filing of appropriate criminal Informations against the latter.** This, in turn, was recommended for approval by Casaclang, respondent Casimiro's immediate superior, to Ombudsman Desierto.

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From the foregoing factual antecedents, it becomes evident that upon review of the 12 April 1996 Resolution, the charges against Acot and Dulinayan were approved for dismissal by Ombudsman Desierto, and not for the filing of Information as recommended and concurred with by Almazan and Falcis, and respondent Casimiro, respectively. Thus, respondent Casimiro cannot be faulted in the delay, if any, in filing the appropriate criminal Informations against Acot and Dulinayan considering that Ombudsman Desierto overruled the recommendations and concurrence by the Investigators and Casimiro as to the finding of probable cause against the said military officials. **Simply put, there was nothing to be filed before the Sandiganbayan against Acot and Dulinayan after the approval and modification of the 12 April 1996 Resolution as the charges against them were approved for dismissal.**<sup>[27]</sup>

In a Resolution dated 23 May 2013,<sup>[28]</sup> the Court of Appeals denied the Motion for Reconsideration<sup>[29]</sup> filed by petitioners on 21 December 2012. Thereafter, this petition for review on certiorari under Rule 45 of the Rules of Court was timely filed on 19 June 2013.

### **The Issues**

In this petition, petitioners seek a reversal of the decision of the OP and the Court of Appeals, and raise the following issues for resolution:

A. WHETHER THE HONORABLE COURT OF APPEALS CORRECTLY RULED THAT PETITIONERS' RIGHT TO DUE PROCESS WAS NOT VIOLATED BY RESPONDENT OFFICE OF THE PRESIDENT, WHEN IT DID NOT CONSIDER THE EVIDENCE PRESENTED BY THE PETITIONERS DURING THE ADMINISTRATIVE ADJUDICATION;

B. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE ARE NO SUBSTANTIAL EVIDENCE ON RECORD AS AGAINST RESPONDENT CASIMIRO FOR THE DELAY IN THE