

## EN BANC

[ G.R. No. 194368, April 02, 2013 ]

### CIVIL SERVICE COMMISSION, PETITIONER, VS. ARLIC ALMOJUELA, RESPONDENT.

#### DECISION

##### BRION, J.:

We resolve the Civil Service Commission's (CSC) appeal by certiorari seeking the reversal of the Court of Appeals' (CA) amended decision<sup>[1]</sup> in CA-G.R. SP No. 106258. The assailed decision partly granted the respondent SJO2 Arlic Almojuela's (*SJO2 Almojuela*) Motion for Reconsideration from the CA's original decision,<sup>[2]</sup> affirming its finding that SJO2 Almojuela is guilty of gross misconduct.

#### Factual Antecedents

The present administrative case, filed against Desk Officer/ Supervisor SJO2 Almojuela, sprang from the escape of a detention prisoner in the Makati City Jail.

##### ***Tony Lao's escape***

At six'o clock in the morning of December 13, 2003, Ding Cang Hui a.k.a. Tony Lao / Tony Ling (*Lao*), a Chinese inmate charged with violation of Republic Act No. 6425 (the Dangerous Drugs Act) was discovered to have escaped from his cell at the Makati City Jail. The following officers of the Bureau of Jail Management and Penology (*BJMP*) – National Capital Region Office (*NCRO*) were on third shift custodial duty when Lao escaped: J/C INSP Pepe Quinones (*J/C INSP Quinones*); SJO2 Arvie Aquino JMP (*SJO2 Aquino*), officer of the day; SJO2 Arlic Almojuela JMP (*SJO2 Almojuela*), desk officer / supervisor; SJO1 Jose Rodney Lagahit JMP (*SJO1 Lagahit*), desk reliever; JO1 Eric Manuel Palileo (*JO1 Palileo*), duty nurse; JO1 Rommel Robles JMP (*JO1 Robles*), gater; JO1 Manuel Loyola, Jr. (*JO1 Loyola*), gater; JO1 Reynaldo Pascual JMP (*JO1 Pascual*), cell guard and JO1 Jaime Ibarra (*JO1 Ibarra*), roving guard.<sup>[3]</sup>

Based on testimonies cited in Civil Service Resolution No. 080701<sup>[4]</sup> and the Court of Appeals' decision, the facts outlined below led to Lao's escape.

At about 11:00 p.m., SJO2 Aquino made a headcount of the inmates in the Makati City Jail, ensured every cell was padlocked, and instructed SJO2 Almojuela (the desk officer on duty) to dispatch the personnel to their respective areas of responsibilities.<sup>[5]</sup>

Thirty minutes later, inmate Florencio Jacinto (*Jacinto*) saw Cabidoy, an inmate charged with opening and closing the cell gates, open Cell Number 8. Lao came out

and Jacinto never saw him return to his cell.<sup>[6]</sup>

Soon after Jacinto saw Lao walk out of Cell Number 8, JO1 Loyola (the gater at the Main Gate) saw Lao at the front desk talking to SJO2 Almojuela and JO1 Pascual. According to JO1 Loyola, SJO2 Almojuela ordered him and JO1 Pascual to buy food outside the jail premises.<sup>[7]</sup> SJO1 Robles, another gater at the main gate, saw the two leave the compound at around 11:45PM. SJO1 Robles then saw Lao, Cabidoy and another inmate conversing at the Desk Area. SJO1 Robles were about to approach the three inmates to caution them, but upon seeing SJO1 Lagahit at the desk area, he went back to his post. JO1 Pascual and JO1 Loyola returned to the compound at around 12:30 a.m.; upon arrival, JO1 Loyola asked JO1 Robles "*nandyan na si Warden (Chief Inspector Quinones)?*", to which the latter replied "*tulog na si sir.*" JO1 Robles observed that JO1 Pascual was hiding something bulky in his uniform.<sup>[8]</sup>

In his defense, SJO2 Almojuela asserted that JO1 Loyola and JO1 Pascual went out of the jail compound without his permission. He also testified seeing JO1 Pascual and Lao together at around 12 midnight, while Lao was using JO1 Pascual's cellphone.<sup>[9]</sup> Lao's use of JO1 Pascual's cellphone was corroborated by SJO1 Robles's testimony, who also said that JO1 Loyola's phone kept on ringing or alerting for text messages. It was not clear from SJO1 Robles's testimony if JO1 Loyola was with JO1 Pascual and Lao at that time.

Roughly twenty minutes after Lao was seen using JO1 Pascual's cellphone, JO1 Loyola ordered inmate Cabidoy to go to sleep, while JO1 Pascual took the keys to the jail cells from Cabidoy.<sup>[10]</sup>

At around 1:15 a.m., inmate Juan Mogado, Lao's former cellmate, saw Lao for the last time, when the latter bought P20.00 worth of Marlboro cigarettes from the store he was tending.<sup>[11]</sup>

Fifteen minutes later, at about 1:30 a.m., SJO1 Robles testified that JO1 Loyola took the gate keys for the vehicular and visitor entrance and told him "*Sige pahinga ka muna, mamaya ko na ibigay sa iyo mga 3:00.*"<sup>[12]</sup>

Between 1 to 1:30 a.m., Joan Panayaman, Almojuela's househelp, saw JO1 Loyola and JO1 Pascual together while she was heading for the comfort room. As she approached them, Panayaman overheard JO1 Pascual talking over the cellphone saying "*Bago namin ilabas ito, magdagdag muna kayo ng isang milyon.*" JO1 Pascual then toned down his voice and entered his room, while JO1 Loyola walked towards the jail area. She went up to SJO2 Almojuela's room, but found it locked. While going downstairs, she saw JO1 Loyola walking towards the gate with a man; a few minutes later, JO1 Loyola returned without the man.<sup>[13]</sup>

According to SJO2 Almojuela, he went to his barracks at around 1:20 a.m. and returned at around 1:30 a.m.<sup>[14]</sup> This is contradicted by SJO1 Lagahit's testimony, which asserts that SJO2 Almojuela left the front desk at around 1 a.m. and returned only at 3 a.m.<sup>[15]</sup> At around the same time, inmate Jerwin Mingoy (*Mingoy*) testified that SJO2 Almojuela ordered him to get food at cell number 8 and set the table for the 3rd shift personnel.<sup>[16]</sup> It must be noted, however, that SJO1 Loyola

saw the members of the 3rd shift personnel take their meal some time between 12 a.m. to 1 a.m.,<sup>[17]</sup> while inmate Cabidoy cooked their meal at around 11:45 a.m.<sup>[18]</sup>

Between 2:00 to 3:00 a.m., JO1 Loyola said he saw that the desk area was unmanned and the control gate of the detention cells open; he then gave the keys in his possession to JO1 Robles and went to the infirmary.<sup>[19]</sup> JO1 Loyola did not explain his whereabouts between 1:00 to 2:00 a.m.

SJO1 Lagahit testified that he conducted a roving inspection at around 2:30 a.m., and saw JO1 Loyola going to the infirmary where JO1 Palileo was assigned. He also saw SJO1 Pascual sitting in front of the gate of Cell Number 8, where Lao was billeted.<sup>[20]</sup> By 2:45 a.m., JO1 Robles said he woke up to find that the keys earlier taken by JO1 Loyola were already on his belly.<sup>[21]</sup>

At around 3 a.m., inmate Mingoy saw Lao talking to JO1 Palileo at the Desk Area.<sup>[22]</sup> By 3:30 a.m., SJO2 Aquino left the female brigade area; while on her way to the Desk Officer's lounge, she saw the following: (1) SJO2 Almojuela sleeping on a folding chair; (2) JO1 Palileo sleeping in the infirmary; (3) SJO1 Lagahit watching TV; 4) both control gates 1 and 2 were open; and (5) JO1 Pascual was standing inside control gate number 2.<sup>[23]</sup>

By 5:30 a.m., several BJMP officers saw Chief Inspector Quinones leave the jail compound aboard his car. News broke out in the jail facility that Lao was missing at around the same time.<sup>[24]</sup> Lao surreptitiously left the Makati City Jail and brought along with him his possessions, including a trophy he won at a pingpong match inside the prison.<sup>[25]</sup>

Two days after Lao's escape, Supt. Edgar C. Bolcio, who replaced Chief Inspector Quinones, conducted a search and inspection of the barracks of the jail personnel suspected to be involved in Lao's escape. This resulted in the recovery of 10 keys from SJO2 Almojuela's barracks, one of which matched the padlock of the main gate.<sup>[26]</sup>

The National Bureau of Investigation (NBI) subsequently conducted polygraph tests on JO1 Pascual and SJO2 Almojuela. According to the NBI, JO1 Pascual and SJO2 Almojuela's responses were "indicative of deceptions occurred at relevant questions". When confronted and interrogated by the NBI, the two could not satisfactorily explain the polygraph tests' results.<sup>[27]</sup>

### ***The BJMP's Investigation Report***

A BJMP Investigation Report conducted on the incident concluded that SJO2 Almojuela and the rest of the jail officers on third shift custodial duty all colluded to facilitate Lao's getaway.<sup>[28]</sup> Based on the report's recommendation, the Intelligence and Investigation Division of the BJMP filed an administrative complaint against the abovementioned BJMP/NCRO members.<sup>[29]</sup> In Administrative Case No. 04-11, CESO IV Director Arturo Walit, the BJMP hearing officer, rendered his decision dated December 13, 2005,<sup>[30]</sup> finding the following liable:

**First**, SJO2 Almojuela and JO1 Loyola were found guilty of Grave Misconduct and were meted the penalty of dismissal from the service.

**Second**, SJO2 Aquino, SJO1 Lagahit and JO1 Robles were found guilty of Less Serious Neglect of Duty and were meted the penalty of Suspension with forfeiture of salaries and allowances for six months.

**Third**, CINSP Quinones was found guilty of Neglect of Duty and was meted the penalty of Fine equivalent to four months salary; he had since retired from the service.

**Fourth**, JO1 Pascual, while not absolved of administrative liability, could no longer be penalized as the administrative proceedings began long after his separation from the service.

**Fifth**, JO1 Palileo and JO1 Ibarra were exonerated.

SJO2 Almojuela and JO1 Loyola moved for the reconsideration of Director Walit's decision, which the latter denied for lack of merit in a Joint Resolution dated June 21, 2006. SJO2 Almojuela then appealed his conviction before the Civil Service Commission (CSC), which affirmed Director Walit's decision in its Resolution No. 080701. The CSC subsequently denied SJO2 Almojuela's motion for reconsideration.

[31]

### ***The Appellate Court's ruling***

SJO2 Almojuela's next recourse was a petition for review before the Court of Appeals. He assailed the CSC's decision for the following reasons: **First**, SJO2 Almojuela claimed to have been denied due process because he was not accorded the benefit of a full-blown trial. **Second**, SJO2 Almojuela asserted that he was denied equal protection of the laws because lesser penalties were imposed on his co-workers. **Third**, SJO2 Almojuela argued that the evidence on record was insufficient to support his dismissal from the service.[32]

The CA denied SJO2 Almojuela's petition.[33] According to the CA, SJO2 Almojuela was provided the due process required in administrative proceedings when he was given the opportunity to answer the accusations against him. He was fully informed of the charges against him, and did file a counter-affidavit, motions for reconsideration, a notice of appeal, and a memorandum of appeal, where he narrated his side of the story.

Further, SJO2 Almojuela's claim that he was denied equal protection of the laws because his co-workers were sentenced to lesser penalties has no legal basis. Citing *Abakada Guro Partylist v. Purisima*, [34] the CA pointed out that the equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; when persons are under different factual circumstance, they may be treated differently.

In this case, the CA held that SJO2 Almojuela was handed the proper penalty, because next only to the warden, he was the highest-ranking officer in the Makati

City Jail at the time Lao escaped. It was incumbent upon him to oversee the whole jail compound's security, and ensure that all jail personnel performed their respective tasks. His failure to do so deserved a greater penalty than those who were under his command.

Lastly, the CA gave no credit to SJO2 Almojuela's claim that the lack of a hearing and the BJMP's bias against him rendered his dismissal illegal. It held that the presumption of regularity in the performance of Director Alit's duty as disciplining authority should prevail over SJO2 Almojuela's bare and unsupported allegations. Further, Director Alit's decision was based on substantial evidence – testimonies of SJO2 Almojuela's colleagues on duty that night showed the following laxities in the implementation of jail rules:

- (1) SJO2 Almojuela was seen sleeping in a folding chair;
- (2) Control gates 1 and 2 were open;
- (3) SJO2 Almojuela and JO1 Pascual were seen conversing with Lao at the desk area;
- (4) SJO2 Almojuela ordered JO1 Loyola and JO1 Pascual to go out of the compound and to buy food;
- (5) Lao and the other inmates were seen loitering around the jail premises when all of them should have been inside their respective cells;
- (6) The recovered keys from SJO2 Almojuela's makeshift cubicle fit the padlock in the main gate for vehicles;
- (7) Persons other than gatekeepers JO1 Robles and JO1 Loyola had access to the keys of the respective gates assigned to them.

### ***The Appellate Court's Amended Decision***

The appellate court partially granted<sup>[35]</sup> SJO2 Almojuela's motion for reconsideration, and lowered his liability from grave to simple misconduct. Applying Section 54(b), Rule IV of the Uniform Rules on Administrative Cases in Civil Service, <sup>[36]</sup> SJO2 Almojuela was meted the penalty of three months suspension as there was neither any attendant mitigating nor aggravating circumstance.

Citing *Civil Service Commission v. Lucas*,<sup>[37]</sup> the CA held on reconsideration that misconduct, to be considered grave, must involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple.

The CA found no corrupt motive or willful intent on SJO2 Almojuela's part to violate the BJMP Rules and Regulations. No clear evidence was presented to show that SJO2 Almojuela was directly involved in the prison break, nor was it proven that he benefited from it. SJO2 Almojuela likewise did not willfully trifle with the BJMP Rules and Regulations. While Lao was allowed to leave his cell, he was accompanied by the roving guard, JO1 Pascual, at all times. Considering the presumption that JO1 Pascual was regularly performing his duty, SJO2 Almojuela had no reason to believe that Lao would escape because he was under the jail guard's watch. Further, SJO2 Almojuela was seen sleeping on duty only once; since SJO2 Aquino and SJO1