

## TWELFTH DIVISION

[ CA-G.R. SP. No. 118307, March 11, 2014 ]

**SPO2 JERRY T. VILLARIN AND PO3 ESTANISLAO AVENIDO,  
PETITIONERS, V. ELIZABETH GALLARDE, RESPONDENT.**

### D E C I S I O N

**ELBINIAS, J.:**

For disposition is a Petition for Review<sup>[1]</sup> filed under Rule 43 of the Rules of Court. The Petition assails the Decision<sup>[2]</sup> dated January 31, 2008 of the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices ("OMB-MOLEO" for brevity) in OMB-V-A-06-0182-C for "Grave Misconduct"<sup>[3]</sup>. The Petition also assails OMB-MOLEO's Order<sup>[4]</sup> dated July 29, 2010, which denied petitioners' eventual Motion for Reconsideration<sup>[5]</sup>

The antecedent facts are those as stated in the OMB-MOLEO's assailed Decision<sup>[6]</sup> dated January 31, 2008, as follows:

**"Allegedly, in the morning of 10 March 2006, at Moalboal PNP Station, respondent PO3 Avenido (*petitioner Avenido here*) told complainant (*respondent here*) that SPO3 Villarín (*petitioner Villarín here*) wanted to talk to her regarding the possible settlement of the case against her son Mark James who was caught in a buy-bust operation for selling shabu and who was detained at Moalboal police station.**

In the afternoon of 13 March 2006, **complainant (*respondent*) met SPO2 Villarín at the Office of the Chief of the Moalboal police station.** While inside said office, SPO2 Villarín locked the door and said: **'AKO ANG TEAM LEADER MANANG SA PAGDAKOP SA IMONG ANAK NG SI MACMAC (*Mark James*). PERO DUNA GYUY NEGOSASYON. MAKAHATAG KA NAKO UG P80,000.00?' (*I am the team leader of the group who arrested your son Macmac. But this is subject to a negotiation. Will you be able to give me P80,000.00?*)** SPO2 Villarín further told complainant (*respondent*) that **if she will be able to give the amount of P80,000.00, her son will be charged with a lesser offense, thus, her son could post bail.** Complainant (*respondent*) replied that she will first look for money.

In the afternoon of the same day, **complainant (*respondent*) met with Mayor Titing Cabaron who told her that he will help her should she report what transpired at the Office of the Chief of Police with SPO2 Villarín to the NBI Regional Office VII.**

On 14 March 2006, **complainant (*respondent*) went to the NBI and she was told to come back on 17 March 2006 to execute an**

**affidavit and plan an entrapment of the policemen** involved in her complaint.

On 15 March 2006, **PO3 Avenida** and **SPO2 Villarin** asked complainant (*respondent*) to meet them again at the Office of the Chief of Police, Moalboal PNP Station. Complainant (*respondent*) obliged and while inside the said office, **SPO2 Villarin demanded an additional P5,000.00 from the original amount of P80,000.00 they demanded**, claiming that the P5,000.00 will be given to the Chief of Police. Complainant (*respondent*) answered that the amount is too much and that she only has P35,000.00. PO3 Avenida told complainant (*respondent*) that the P35,000.00 was enough and asked her to hand over the money.

However, **complainant (*respondent*) told respondents (*petitioners*) that the money was with her sister Margarita Lipag**. SPO2 Villarin told complainant (*respondent*) to come back with the P5,000.00 as the Chief urgently needed the said amount. **Complainant (*respondent*) left the station and did not go back.**

On 17 March 2006, **complainant (*respondent*) went to the NBI and filed a complaint.**

On 22 March 2006, **complainant (*respondent*) informed the NBI that PO3 Avenida told her to meet them at the Palace of Justice and hand them the agreed amount of P35,000.00. At around 11:30 a.m. of the same day**, a briefing was conducted at the NBI for the conduct of an entrapment operation.

Thereafter, complainant (*respondent*), together with her son Mark James and two (2) policemen, met respondents (*petitioners*) at the Palace of Justice. PO3 Avenida and PO2 Amancio brought complainant (*respondent*) outside the compound of the Palace of Justice and insisted that she hand them the money at the house of SPO2 Villarin. Complainant (*respondent*) disagreed. Upon the instruction of PO3 Avenida, **complainant (*respondent*) left the money inside the newspaper on top of the table of a carenderia. When PO3 Avenida took the money, agents of the NBI arrested him. PO1 Amancio and SPO2 Villarin were also arrested at the compound of the Palace of Justice.**<sup>[7]</sup> (*Emphasis Supplied*)

As a result, the Office of the Ombudsman-Visayas filed before the Regional Trial Court, Branch 21 of Cebu City ("RTC-Cebu" for brevity) an Information for Direct Bribery against petitioners SPO2 Jerry T. Villarin and PO3 Estanislao Avenida ("petitioners" for brevity), and PO2 Godofredo Amancio ("PO2 Amancio" for brevity)<sup>[8]</sup>. Respondent Elizabeth Gallarde ("respondent" for brevity) also filed before the OMB-MOLEO an administrative case for Gross Misconduct against petitioners and PO2 Amancio<sup>[9]</sup>, which administrative case is the subject of the Petition for Review<sup>[10]</sup> at bench.

Petitioners and PO2 Amancio, however, denied having demanded any money from respondent. The rest of the facts are continued in the OMB-MOLEO's assailed Decision<sup>[11]</sup> dated January 31, 2008, to wit:

**"Respondents (*petitioners*) denied the material allegations of the complaint. Their version of the incident is as follows:**

On 10 March 2006 and 13 March 2006, **complainant (*respondent*) approached PO3 Avenido and SPO2 Villarin, respectively, to discuss the case of her son Mark James who was arrested pursuant to a buy-bust operation. In both instances, respondents (*petitioners*) told complainant that they could not do anything as the criminal complaint against her son was already filed with the Office of the Provincial Prosecutor on 7 March 2006.**

Respondents (*petitioners*) did not hear from complainant (*respondent*) again until 22 March 2006 when SPO2 Villarin, PO3 Avenido and PO2 Amancio brought Mark James to the Office of the Provincial Prosecutor following the expiration of the extension period of the Waiver of Detention. When respondents (*petitioners*) arrived at the Office of the Provincial Prosecutor at around 11:30 a.m., SPO2 Villarin asked the clerk if there was already a resolution in the case of Mark James. But the clerk told them to wait for awhile as Provincial Prosecutor Jane Petralba had not yet replied. Thus, **respondents (*petitioners*) decided to take their lunch at a nearby restaurant. At around 1:30 p.m., while respondents (*petitioners*) continued to wait at the administrative section, SPO2 Villarin and PO3 Avenido went outside to smoke. PO3 Avenido then became thirsty, thus, he went back to the restaurant for a drink. There, he met complainant (*respondent*) who approached him and told him that she was willing to give them money in exchange for the downgrading of her son's case. Complainant (*respondent*) pleaded with PO3 Avenido claiming that they were relatives, and that her husband and three (3) sons were already languishing in jail. She further asked him if he had a grudge against her family. PO3 Avenido retorted that he was merely doing his job as police officer. Complainant (*respondent*) then handed him something wrapped in a newspaper. PO3 Avenido felt insulted, pushed the thing back towards complainant (*respondent*), and stood up to leave the restaurant. However, before he could leave the place, NBI operatives arrested and searched him, and brought him to their office.**

**Thereafter, the NBI also arrested SPO2 Villarin and PO2 Amancio."**<sup>[12]</sup> (*Emphasis was made in the original*)

On January 31, 2008, the OMB-MOLEO rendered its assailed Decision<sup>[13]</sup> finding petitioners administratively liable for Grave Misconduct, and which Decision in turn, recommended the dismissal of petitioners from service. However, the OMB-MOLEO recommended the dismissal of the administrative complaint against the other respondent below, PO2 Amancio, on ground of lack of substantial evidence. The dispositive portion of the Decision read as follows:

**"WHEREFORE, it is respectfully recommended that respondents SPO2 JERRY VILLARIN and PO3 ESTANISLAO AVENIDO be meted the penalty of Dismissal from the Service for having committed GRAVE MISCONDUCT pursuant to Section 52(A), Rule IV, Uniform Rules on Administrative Cases in Civil Service.**

For lack of substantial evidence, it is respectfully recommended that the administrative complaint for Grave Misconduct against **SPO2 GODOFREDO AMANCIO** be **Dismissed**.

Let a copy of this Order be furnished the Chief, Philippine National Police, for its proper implementation.

**SO ORDERED.**"<sup>[14]</sup> (Emphasis was made in the original)

Petitioners then filed a Motion for Reconsideration<sup>[15]</sup> of the OMB-MOLEO's Decision<sup>[16]</sup> dated January 31, 2008, which found petitioners liable for Grave Misconduct.

Pending resolution of such Motion for Reconsideration<sup>[17]</sup>, the RTC-Cebu in its Decision<sup>[18]</sup> dated October 13, 2009 dismissed the Criminal Case for Direct Bribery against petitioners and PO2 Amancio on ground of reasonable doubt.

Petitioners then filed a "SUPPLEMENT TO THE MOTION FOR RECONSIDERATION (earlier filed on May 21, 2009)"<sup>[19]</sup> ("Supplement MR" for brevity), invoking their acquittal in the Criminal Case for Direct Bribery.

After petitioners' Motion for Reconsideration<sup>[20]</sup> and Supplement MR<sup>[21]</sup> were denied in the OMB-MOLEO's assailed Order<sup>[22]</sup> dated July 29, 2010, petitioners filed the Petition for Review at bench, praying as follows:

"WHEREFORE, foregoing premises considered, it is most respectfully prayed of this Honorable Court of Appeals, to reverse the Decision of the OMB-MOLEO and enter a new judgment acquitting herein petitioners of the administrative charge of grave misconduct. It is likewise prayed that, pending the decision of the main case, the salaries, allowances and emoluments of the petitioners from June, 2009 until February 07, 2011 shall be released.

Other relief consistent with justice and equity are likewise prayed."<sup>[23]</sup>

Petitioners raised the following issues:

"I

WHETHER OR NOT THE JUDGMENT OF  
CONVICTION FOR GRAVE MISCONDUCT  
BEFORE THE OMB-MOLEO WAS SUPPORTED BY  
SUBSTANTIAL EVIDENCE?

II

WHETHER OR NOT A JUDGMENT OF  
CONVICTION FOR GRAVE MISCONDUCT WITH  
A PENALTY OF DISMISSAL IS IMMEDIATELY  
EXECUTORY PENDING A MOTION FOR  
RECONSIDERATION?"<sup>[24]</sup>

As properly argued by petitioners in their *first assigned issue*, there was absence of substantial evidence to hold petitioners liable for Grave Misconduct.

In holding petitioners liable for Grave Misconduct, the OMBMOLEO's assailed Decision<sup>[25]</sup> stated as follows:

"At issue is whether or not respondents (petitioners) may be held administratively liable for demanding money from complainant (respondent) in exchange for the downgrading of the charge against complainant's son Mark James.

We rule in the **affirmative as regards respondents SPO2 Villarin and PO3 Avenida (petitioners)**, and in the negative with respect to PO2 Amancio.

**Substantial evidence abounds in the instant case showing respondent[s] SPO2 Villarin and PO3 Avenida's guilt for Grave Misconduct.**

SPO2 Villarin was the team leader of the group who conducted a buy-bust operation against Mark James Gallarde, while PO3 Avenida was a member of the said group.

**Respondents PO3 Avenida and SPO2 Villarin (petitioners here) admitted that they talked with complainant (respondent Elizabeth here) regarding the possible downgrading of the charge against complainant's (respondent) son Mark James Gallarde. However, respondents (petitioners) denied that they demanded money in exchange for the downgrading of the offense.** As jurisprudence dictates, *to be believed, denial must be buttressed by strong evidence of non-culpability, otherwise, it is purely self-serving and has practically no evidentiary value.*

Militating against respondents' (petitioners) claim is the fact that respondent (petitioner) PO3 Avenida met with complainant (respondent) at the restaurant. We are not convinced that the said meeting was merely accidental as claimed by PO3 Avenida. Moreover, **the members of the NBI who conducted the entrapment operation attested that PO3 Avenida received the marked money. Physics Report No. 2006-P-3003 revealed that PO3 Avenida's hands yielded positive for fluorescent powder.**"<sup>[26]</sup> (*Italics was made in the original, Emphasis Supplied*)

Negating the OMB-MOLEO's findings however, is that respondent's allegations in her Complaint were not supported by substantial evidence, or by such pieces of evidence that would support the conclusion that petitioners had demanded money from respondent in exchange for petitioners' downgrading of the charge filed by them against respondent's son, who in turn had earlier been arrested in a buy-bust operation.

First, respondent's claim in her "Affidavit of Complaint"<sup>[27]</sup> that petitioners offered to downgrade the charge against respondent's son in exchange for Eighty Thousand Pesos (Php 80,000.00) was thwarted by the fact that when petitioners supposedly made the offer to respondent on March 13, 2006<sup>[28]</sup>, petitioners had already filed, on March 7, 2006, before the Office of the Provincial Prosecutor, a Criminal Case for Violation of Section 5 (Illegal Sale of Dangerous Drugs), Article II of Republic Act