

**PFC GILBERT OMA PA, PETITIONER, VS. GREGORIO SUGANO JR.,
RUBY SUGANO-CABURAL, MARJORIE SUGANO-PURGATORIO,
JONATHAN CABURAL, RESPONDENTS.**

Ponente: LOPEZ, J.

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LOPEZ, J.:

PFC Gilbert Omay PA (petitioner), a member of the 4th Infantry Division, Philippine Army, Camp Evangelista, Cagayan de Oro City is before the Court via a petition for review^[1] under Rule 43 of the Rules of Court assailing the September 4, 2009 Decision^[2] and February 28, 2011 Order^[3] of the Office of the Ombudsman Office of the Deputy Ombudsman for the Military and Other Law Enforcement Office (OMB-MOLEO) finding petitioner guilty of conduct unbecoming a public officer with a recommendation that petitioner be dismissed from the service.

The Facts:

The case arose from an administrative complaint^[4] for conduct unbecoming of a public officer filed by respondents Gregorio Sugano, Jr., Ruby Sugano-Cabural, Marjorie Sugano-Purgatorio and Jonathan Cabural against petitioner before the OMB-MOLEO.

According to the complainants, in the afternoon of December 14, 2007, petitioner together with his wife Josefa Omay (Josefa), his mother-in-law Rebecca Jumamil (Rebecca) and sisters-in-law Judy Enoc (Judy) and Jocelle Jumamil (Jocelle) went to the house of Gregorio Sugano (Gregorio) at barangay Liangan East, Bacolod, Lanao del Norte. When the group of petitioner arrived in front of Gregorio's house, petitioner, who was then armed with a .45 caliber pistol immediately dragged Ruby Sugano-Cabural (Ruby) and Marjorie Sugano-Purgatorio (Marjorie) towards the direction of Josefa and Judy who suddenly initiated an attack. A fight then ensued.

Gregorio, the father of Ruby and Marjorie, hurriedly approached to intervene, but petitioner collared him and struck his face with a gun causing him to fall on the ground. Gregorio then saw petitioner cock a gun, point it towards his direction and pull its trigger. Fortunately, Gregorio managed to evade the shot. When Gregorio stood up, Jocelle hit him at the back with a piece of wood. Gregorio saw several bystanders and neighbors around who attempted to help but they were prevented by petitioner by threatening to shoot them with his gun. Out of fear, the people merely watched them until petitioner and his family left.

Ruby Sugano-Cabural and Marjorie Sugano-Purgatorio^[5] corroborated that on December 14, 2007, they saw petitioner, Josefa, Jocelle and Rebecca Jumamil, standing in front of their house. Suddenly, petitioner walked towards their direction and held their arms tightly. They were dragged and pushed by petitioner towards the direction of Josefa and Judy. A struggle ensued between them. Their father Gregorio came to the rescue but petitioner held their father's collar and struck his face with a gun. They saw their father fell on the ground with blood drifting from his mouth. Suddenly, they saw petitioner cocked and pulled the trigger of his gun while pointing the same at their father.

Witnesses Jonathan Cabural,[6] Leonora Diamante and Lourdes Tano confirmed that there were many people who witnessed the incident, but were threatened by petitioner with his gun.

This prompted petitioners to immediately report the incident at Bacolod Municipal Police Station and thereafter filed the administrative complaint for conduct unbecoming of a public officer against petitioner before the OMB-MOLEO.

Petitioner however strongly denied the allegations of respondents. He countered that the incident is an offshoot of an old grudge between the Sugano Family on one hand and the Jumamil Family on the other. On December 14, 2007, Marjorie and Ruby Sugano ganged up on his wife Josefa and he merely prevented the two from inflicting physical harm on his wife. In the process, he saw Gregorio rushing to the scene brandishing a bolo, causing him to pull out his .45 caliber pistol and fired one (1) warning shot in the air. Petitioner strongly denied the accusation of Gregorio that he fired a shot while the latter was down on the ground. Petitioner claims that if indeed he has intention to shoot Gregorio, he could have hit him even if his eyes were closed. Petitioner however, admitted that since he could not contain Gregorio with his bare hands, he gave the former a fist blow on the face that caused him to fall down. It was at this instance that Jocelle hit Gregorio with an umbrella to prevent the latter from pursuing him.

Rebecca, Jocelle and Judy corroborated the contentions and defenses of petitioner. In their Joint Counter Affidavit,[7] they aver that contrary to the claim of Gregorio, petitioner was pressed upon by the circumstance to pull out his gun tucked in his waist and to fire it once aimed upward to deter the imminent aggression caused by Gregorio. But, despite the gunfire, Gregorio relentlessly continued his thrust towards petitioner prompting the former to throw a punch against the latter. They maintain that the act of petitioner in firing his gun into the air is not meant to exterminate human life but only as an act of deterring the possibility of the loss of human lives.

Judy added that at the time of the incident, she saw Marjorie and Ruby attacking her sister Josefa. Sensing that her sister is no match against Marjorie and Ruby, she decided to join the brawl. During the fight, she also sustained several scratches on her head.

After due proceedings, Graft Investigation and Prosecution Officer II Lyn L. Llamasares of OMB-MOLEO rendered the assailed Decision on September 4, 2009, recommending the dismissal of petitioner from the service.

The subsequent motion for reconsideration[8] filed by petitioner was denied by the OMB-MOLEO on February 28, 2011.[9]

Hence, the petition for review.

Issues:

In this petition for review, petitioner raised the following issues for resolution, thus:

I. WHETHER OR NOT THE HONORABLE OFFICE OF THE OMBUDSMAN ERRED IN FINDING SUBSTANTIAL EVIDENCE AGAINST THE PETITIONER WHICH SERVED AS BASIS FOR ORDERING HIS DISMISSAL FROM THE MILITARY SERVICE.

II. WHETHER OR NOT THE HONORABLE OFFICE OF THE OMBUDSMAN ERRED IN NOT GIVING DUE CREDENCE AND CONSIDERATION TO THE EVIDENCE ADDUCED BY THE PETITIONER-RESPONDENT.[10]

The Court's Ruling:

The petition for review is unmeritorious.

Ombudsman has authority to conduct
administrative investigation against
erring public officers

At the outset, We stress that the Ombudsman's authority to act on administrative complaints against erring public officers is anchored in Section 13 (1), Article XI of the 1987 Constitution, which provides:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. x x x

(Emphasis supplied)

Section 16 of Republic Act (RA) No. 6770, otherwise known as the Ombudsman Act of 1989 further provides that the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his/her tenure.

Section 19 of RA No. 6770, also states:

Section 19. Administrative Complaints. – The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

In *Samson v. Restrivera*,^[11] the Supreme Court explained that the law does not require that the malfeasance, misfeasance, and nonfeasance committed to by a public officer be related to the performance of an official duty, thus:

xxx even if the complaint concerns an act of the public official or employee which is not service-connected, the case is within the jurisdiction of the Ombudsman. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty. Since the law does not distinguish, neither should we.

Thus, the argument of petitioner that he should not be removed from office because the alleged crime for which he was accused and made the basis of the administrative complaint lodged against him with the Office of the Ombudsman has nothing to do with the performance of his duties as a member of the Philippine Army is therefore flawed.

Findings of Ombudsman supported
by substantial evidence

Petitioner next assails the Ombudsman's finding of substantial evidence. He claims that the Ombudsman erred in relying solely on the self-serving affidavits of respondents.

We are not persuaded.

It is settled that in administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[12] The standard of substantial evidence is satisfied where the investigating officer, (the Ombudsman in this case), has reasonable ground to believe that the employee is responsible for the offense charged.

In the instant case, We note that contrary to the claim of petitioner, the Ombudsman correctly found that there is substantial evidence to support that petitioner is guilty of committing an act unbecoming of a public officer. Notably, petitioner admitted that he fired his service gun to deter Gregorio and when the latter persisted, he gave the former a fist blow on the face causing him to fall down.

Moreover, We note that the Ombudsman relied not only on the affidavits of the respondents but also of persons who were present when the offense was committed. We concur with the observation of the Ombudsman that –

xxx Contrary to the claim of respondent, the evidence is overwhelming that after he struck Gregorio's face with his firearm, he fired a shot directly at the person of Gregorio. We find incredible the defense of the respondent that Gregorio Sugano was the aggressor and he fired his gun only to prevent the latter from ganging up on his wife. We submit that no person in his right mind would dare challenge into a fight someone who is armed with a gun especially by someone as old as complainant Gregorio Sugano who is already 63 years old at that time. Moreover, the allegation of respondent that Gregorio was armed with a bolo was not substantiated by evidence.

Witness testified that PFC Omay dragged Marjorie and Ruby towards his wife and sister-in-law (Josefa and Judy). Thereafter, Josefa and Judy assaulted Marjorie and Ruby. Gregorio came to give assistance to his daughters but PFC Omay assaulted him. Not contented with the physical assault, he fired his gun directed at Gregorio and threatened to shoot anyone who will attempt to interfere.

As a member of the Philippine Army and a public officer, respondent is a visible representation of the law and justice to the people. As such, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid even the slightest infraction of the law. However, with the acts committed by the respondent in this case, he willfully moved away from the behavioral injunctions of his case. Thus, he must be administratively disciplined for conduct unbecoming of public officer.[13]

Moreover, the Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.

In Assistant Special Prosecutor III Rohermia J. Jamsani-Rodriguez v. Justices Gregory S. Ong, et al.,[14] the Supreme Court said that unbecoming conduct means improper performance and applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method. It encompasses all acts which has a tendency to destroy public respect.

The foregoing acts of petitioner clearly constitute conduct unbecoming of a public officer because it tends to destroy public respect to the public office which he holds. We also found no reason to disturb the findings of the Ombudsman, which under Section 27 of RA No. 6770, findings of fact by the Ombudsman are conclusive as long as these are supported by substantial evidence, as it is in this case.

ALL TOLD, the petition for review is DENIED. The September 4, 2009 Decision and February 28, 2011 Order of the Office of the Ombudsman Office of the Deputy Ombudsman for the Military and Other Law Enforcement Office are affirmed in toto.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[1] Rollo, p. 2.

[2] Rollo, p. 34.

[3] Rollo, p. 39.

[4] Rollo, Annex "A", p. 20.

[5] Rollo, Annex "B", p. 23.

[6] Rollo, Annex "C", p. 25.

[7] Rollo, Annex "E", p. 31.

[8] Rollo, p. 42.

[9] Ibid.

[10] Rollo, p. 14.

[11] G.R. No. 178454, March 28, 2011.

[12] GSIS v. Mayordomo, G.R. No. 191218, May 31, 2011.

[13] Ibid.

[14] A.M. No. 08-19-SB-J, August 24, 2010.

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