

OLIVER H. ESGUERRA, PETITIONER, VS. PO2 JHOEYH M. RAMOS, RESPONDENT.

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GONZALES-SISON, M., J.:[*]

Assailed in this Petition for Review filed by Oliver H. Esguerra under Rule 43 of the Rules of Court are Decision No. 130284[1] dated March 20, 2013 and Resolution No. 1301066[2] dated June 4, 2013 of the Civil Service Commission (CSC). The CSC upheld the decision of the National Police Commission (NAPOLCOM) Regional Appellate Board–National Capital Region (RAB-NCR), as affirmed by the Secretary of the Department of Interior and Local Government (DILG), finding petitioner guilty of Grave Misconduct.

Petitioner is a former Senior Police Officer 2 (SPO2) of the Regional Intelligence Unit–NCR (RIU-NCR), Camp Bagong Diwa, Taguig City, Philippine National Police (PNP).

The facts, as summarized by the CSC, are:

On February 7, 2010 at 10:30 a.m., while Jhoeyh M. Ramos, Police Officer (PO) 2, was taking a bath in the female comfort room located at the Regional Intelligence Unit–National Capital Region (RIU-NCR), she noticed a metallic silver gray cellular phone (Nokia 6500) held and thrust by a hand to the two (2)-inch space between [the] comfort room's door and floor. The cellular phone was pointed at her and was being used to film/record what she was doing inside the bathroom. Ramos hurriedly dressed up and reported what happened to the RIU-NCR Administrative Office.

After the conduct of the preliminary investigation, it was discovered that Esguerra was present at the time of the incident, and that, he owns a Nokia 6500 cellular phone. Moreover, Shermaine M. Mendoza, a nine (9)-year old girl, saw Esguerra kneeling on the floor outside the female comfort room holding the cellular phone at the bottom part of the door.

Finding prima facie case, Esguerra was formally charged with Grave Misconduct on April 20, 2010, as follows:

“That on February 7, 2010, above-named respondent (Esguerra) while being a member of the Philippine National Police Intelligence Group did then and there willfully and unlawfully took video of PO2 Jhoeyh M. Ramos while taking a bath on or about 11:00 AM on the above-stated date, which is tantamount to Grave Misconduct pursuant to NAPOLCOM Memorandum Circular No. 2007-001.”[3]

After the conduct of formal investigation and submission of the parties' papers and pieces of evidence, the Director of the PNP Intelligence Group (PNP-IG), Police Chief Superintendent Reginald D. Villasanta, rendered a Decision[4] dated June 19, 2010, to wit:

WHEREFORE, premises considered, the respondered is hereby found guilty as charged. SPO2 Oliver H Esguerra [is] hereby ordered dismissed from the police service pursuant to Sec 52 of RA 6975 as amended.

SO ORDERED.

Petitioner moved to reconsider the decision. However, Director Villasanta denied the motion for lack of merit on

December 17, 2010.[5] Petitioner appealed to the RAB-NCR, which rendered a Decision[6] on July 15, 2011, as follows:

WHEREFORE, premises considered, the Appeal of respondent-appellant SPO2 Oliver H. Esguerra is DENIED for lack of merit and the assailed Decision of the Director of PNP-IG finding him culpable of Grave Misconduct and meting him the penalty of dismissal from the service and the subsequent Order dated December 17, 2010 denying the respondent-appellant's Motion for Reconsideration for lack of merit are AFFIRMED.

SO ORDERED.

Dissatisfied, petitioner again appealed to the DILG Secretary, who dismissed the appeal for lack of merit in a Decision[7] dated February 14, 2012, thereby affirming the decision of RAB-NCR.

On appeal, the CSC affirmed the contested ruling of the DILG Secretary on March 20, 2013, to wit:

WHEREFORE, the appeal of Oliver H. Esguerra is hereby DISMISSED. Accordingly, the Decision dated February 14, 2012 issued by the Secretary of the Department of Interior and Local Government (DILG), Quezon City, finding Esguerra guilty of Grave Misconduct and imposing upon him the penalty of dismissal from the service with the accessory penalties of forfeiture of retirement benefits, disqualification from reemployment in the government service, cancellation of civil service eligibility, and bar from taking any civil service examination, is AFFIRMED.[8]

The CSC ruled that the DILG has proven by substantial evidence that Esguerra has committed the offense of Grave Misconduct by surreptitiously filming/recording PO2 Ramos while the latter was taking a bath. The CSC gave credence to the testimony of Ramos, who said that she saw a hand holding a cellular phone directed at her. This was corroborated by nine-year old Mendoza, who alleged in a Sworn Statement dated March 26, 2010 that she identified and caught the petitioner kneeling and holding a cellular phone at the bottom part of the door of the comfort room where Ramos was then taking a bath. The CSC held that the petitioner failed to controvert the prosecution evidence. The CSC also upheld the imposition of the penalty of dismissal of the petitioner from the service with all the accessory penalties for committing Grave Misconduct pursuant to the Revised Rules on Administrative Cases in the Civil Service.

Hence, this petition. The petitioner poses the following issues:

- WHETHER or not the petitioner is guilty of grave misconduct based on the pieces of evidence presented by the respondent; AND
- WHETHER or not the petitioner should be dismissed from service.[9]

THE PETITION IS IMPRESSED WITH MERIT.

Petitioner contends that the CSC erred in giving credence to the testimony of respondent because after the alleged video-taking, respondent saw no one outside the bathroom. Petitioner also posits that it was impossible for Mendoza, the child witness, to identify and see his face. Petitioner asserts that, assuming Mendoza saw him kneeling down, it would have been impossible to see his face because it would have been directed towards the floor. Invoking denial and alibi as defense, petitioner likewise claims that he only arrived at the scene of the incident at 11:00 in the morning, a statement corroborated by PO2 Albao and PO2 Sarabi.

At the outset, we stress that the case against the petitioner is administrative not criminal in nature. Administrative proceedings are governed by the "substantial evidence rule," meaning a finding of guilt in an administrative case may and would issue if supported by substantial evidence that the respondent has committed

the acts stated in the complaint. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Its absence is not shown by stressing that there is contrary evidence, direct or circumstantial, on record.[10] The standard of substantial evidence is satisfied when there is reasonable ground to believe that herein petitioner is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[11] Hence, evidence to support a conviction in a criminal case is not necessary.[12] Unlike in an administrative case, the prosecution is required to proffer proof beyond reasonable doubt to secure the conviction of an accused in a criminal case.[13]

After carefully reviewing all the evidence obtaining in this case, we find the positive declarations of the respondent and her child-witness in their sworn statements more credible than those of petitioner. To repeat, only substantial evidence is required to hold petitioner liable for the charges against him.

In this case, petitioner denies that he took a video of respondent. While it is true that respondent failed to identify petitioner as the one who took a video of her while inside the comfort room, another witness, nine-year old Mendoza, was able to positively identify “Kuya Esgue”, who turned out to be the same person as petitioner, as the culprit.[14] Mendoza stressed that she knows the petitioner since she had been staying in that division since she was a little girl. On the basis of her personal knowledge and familiarity with petitioner, Mendoza was able to make a positive physical identification of petitioner as the culprit and recognize his face.

Petitioner also contends that he only arrived at the alleged place of the incident at 11:00 in the morning and concludes that it was physically impossible for him to be the person responsible for taking a video of respondent since the recording occurred 30 minutes earlier. Petitioner's allegation fails to convince us. Prosecution witness Mendoza positively identified petitioner as the one who took a video on respondent in contrast to the petitioner's defense of denial and alibi.

It is elementary that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[15]

Since Mendoza positively identified petitioner as the culprit, it is, thus, incumbent upon petitioner to prove that he was at another place when the video-taking was committed, and that it was physically impossible for him to have been at the scene of the crime at the time it was committed. Unfortunately, petitioner failed in this regard. The records are devoid of any indication that it was physically impossible for petitioner to have been in the scene of the crime at the time it was committed. Petitioner's bare alibi that he merely arrived 30 minutes after the commission of the offense does not suffice to prove the alleged physical impossibility that he committed the offense charged, more so in the face of positive identification by the child witness, who was not motivated by any improper motive to falsely testify against him.[16]

The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence because it is not expected that said witnesses would prevaricate and cause the damnation of one who brought them no harm or injury.[17]

Thus, petitioner's bare denial and alibi vis-a-vis the positive testimony of the child witness, the latter should prevail.

Petitioner further asserts that the crime for which petitioner was found guilty by the DILG Secretary and affirmed

by the CSC is only unjust vexation, considered a light felony under the Revised Penal Code (RPC), thus, the penalty of dismissal is too harsh. Even assuming that he committed the charge of grave misconduct, petitioner pleads that his 15 years of service in the government, numerous awards and commendations and the fact that this is his first offense should have been considered as mitigating circumstances in the imposition of the proper penalty.

It must be stressed that misconduct in office has a definite and well understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual.[18] In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer.[19] Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence.[20] It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office.[21]

Here, petitioner's act of video-recording respondent was in no way related to or connected with the performance of his functions and duties as a public officer. While such conduct is condemnable and thus, should not be tolerated, it is only reflective of his character as a private individual and not of his performance as a public officer. Moreover, while the offense was committed within the PNP RIU-NCR office and definitely, his offense speaks despicably of his character as a man but it in no way evinced any failure on his part to discharge his duties as a public officer.

Even assuming that petitioner is guilty of unjust vexation, i.e., the offender's act caused annoyance, irritation, torment, distress or disturbance to the mind of the person to whom it is directed[22], we do not see how petitioner's annoying act of video-recording respondent would have a bearing on the performance of his duties and functions as a police officer. Without a direct relation or connection between the act complained of and the discharge of duty, the charge of grave misconduct shall necessarily fail.[23] Indeed, petitioner's offense is gravely immoral and reprehensible but it falls short of grave misconduct as defined by law.[24]

However, his act of taking a video of respondent while inside the comfort room comes within the purview of disgraceful and immoral conduct, which is defined as "an act which violates the basic norm of decency, morality and decorum abhorred and condemned by the society"[25] and "conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community."[26]

Immorality has been defined to include not only sexual matters but also "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare."[27] By his willful, flagrant and shameless conduct, petitioner clearly violated the basic norm of decency and morality.

The Revised Rules on Administrative Cases in the Civil Service considers disgraceful and immoral conduct as a grave offense which merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense. In this case, inasmuch as the commission of disgraceful and immoral conduct by petitioner constitutes the first charge of this nature, and considering his 15 years of public service and numerous awards and commendations, the Court shall at this instance suspend petitioner for six months and one day without pay.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision No. 130284 dated March 20, 2013 and Resolution No. 1301066 dated June 4, 2013 of the Civil Service Commission, finding petitioner Oliver H. Esguerra guilty of Grave Misconduct are **REVERSED** and **SET ASIDE**. The charge against petitioner for Grave Misconduct is **DISMISSED**. However, the Court finds petitioner **GUILTY** of Disgraceful and Immoral Conduct and is hereby **SUSPENDED** from office without pay for **SIX MONTHS** and **ONE DAY** with a **WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Ybañez, E.A.,^[**] and Sorongon, E.D., JJ., concur.

[*] Vice J. Carandang per Office Order No. 485-14-RSF dated November 24, 2014.

[**] Vice J. Gonzales-Sison per Office Order No. 485-14-RSF dated November 24, 2014.

[1] Rollo, pp. 52-55.

[2] Id. at 48-50.

[3] Id. at 53.

[4] Id. at 56-58.

[5] Id. at 67-68.

[6] Id. at 95-102.

[7] Id. at 144-147.

[8] Id. at 55-A.

[9] Id. at 10.

[10] *Gupilan-Aguilar v. Office of the Ombudsman*, G.R. No. 197307, February 26, 2014.

[11] See *Banaag v. Espeleta*, A.M. No. P-11-3011, December 16, 2011.

[12] See *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011.

[13] See *Paredes v. Court of Appeals*, G.R. No. 169534, July 30, 2007.

[14] Rollo, p. 21.

[15] *Malana v. People*, G.R. No. 173612, March 26, 2008.

[16] See *People v. Rarugal*, G.R. No. 188603, January 16, 2013.

[17] *Flores-Tumbaga v. Tumbaga*, A.M. No. P-06-2196, October 22, 2012.

[18] *Villanueva v. Court of Appeals*, G.R. No. 167726, July 20, 2006.

[19] *Largo v. Court of Appeals*, G.R. No. 177244, November 20, 2007.

[20] *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau*, G.R. No. 173121, April 3, 2013.

[21] *Villanueva v. Court of Appeals*, *supra*. note 18.

[22] Maderazo v. People of the Philippines, G.R. No. 165065, September 26, 2006.

[23] See Gupilan-Aguilar v. Office of the Ombudsman, *supra*. note 10.

[24] Villanueva v. Court of Appeals, *supra*. note 18.

[25] Banaag v. Espeleta, *supra*. note 11.

[26] Flores-Tumbaga v. Tumbaga, *supra*. note 17.

[27] Jallorina v. Taneo-Regner, A.M. No. P-11-2948, April 23, 2012.

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