

**MANUEL MIRALLES, PETITIONER, VS. HON. SERGIO F. GO,
CHAIRMAN OF THE NATIONAL POLICE COMMISSION; AND PABLO S.
VILLANUEVA, RESPONDENTS.**

G.R. No. 139943. January 18, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Factual findings of administrative agencies, especially when affirmed by the Court of Appeals, are conclusive upon this Court. In the present case, petitioner has not shown sufficient ground to warrant an exception to the foregoing rule.

The Case

Filed before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the May 25, 1999 Decision[1] of the Court of Appeals[2] (CA) in CA-GR SP No. 42477. The CA had affirmed the ruling of the Special Appellate Committee of the National Police Commission (SAC-Napolcom), finding petitioner administratively liable for grave misconduct and ordering his dismissal from the service. The CA ruled as follows:

"Premises considered, the petition is dismissed, without pronouncement as to costs."[3]

The Facts

The facts were adequately summarized by the CA as follows:

"1. On December 7, 1977, an administrative complaint was filed before the Office of the Hearing Officer of NAPOLCOM against petitioner Manuel Miralles for Grave Misconduct committed as follows:

`That on or about the 19th day of October 1977, in Quezon City Metro Manila, the above named respondent did then and there willfully, unlawfully and feloniously, without any just motive, and with intent to kill Patrolman NILO RESURRECION, assault, attack and wound the said Pat. Resurrecion with the use of firearms, directing the shots against the vital parts of the body of the latter and one Ernesto Mercurullo, thereby inflicting upon them gunshot wounds which directly caused the death of Nilo Resurrecion and Ernesto Mercurullo, acts of the said respondent punishable by law and rules.'

(p. 1, Complaint, Annex `4' of Petition)

"2. An investigation was conducted by Rogelio A. Ringpis, Hearing Officer No. 3 of NAPOLCOM, Manila (p. 2, Petition).

"3. After hearing, Hearing Officer Rogelio Ringpis submitted to the Chairman of NAPOLCOM an Investigation Report finding petitioner guilty of Grave Misconduct (Double Homicide) and recommending his dismissal from the service.

"Pertinent portion of said Investigation Report is hereby quoted:

`V. RECOMMENDATION:

WHEREFORE, respondent is hereby found guilty of grave misconduct (Double Homicide) and there being no mitigating circumstances to offset the aggravating circumstance, it is respectfully recommended that the penalty of dismissal from the service be imposed with prejudice to reinstatement to the Integrated National Police.

`SO RECOMMENDED.'

(p. 13, Report of Investigation, Annex `E', Petition).

"4. On September 10, 1980, the Adjudication Board No. 15 of the NAPOLCOM rendered its Decision finding petitioner guilty of Grave Misconduct and dismissing him from the service with prejudice to reinstatement, thus:

`WHEREFORE, this Board finds the herein Respondent in the above-entitled case guilty as charged and is hereby DISMISSED FROM THE SERVICE WITH PREJUDICE to reinstatement.

`SO ORDERED.'

(p. 10, Decision, annex `F', Petition)

"5. On April 20, 1981, petitioner filed a Motion for Reconsideration of the Decision but the same was denied by the Adjudication Board (p. 4, Petition).

"6. On September 23, 1981, petitioner appealed the aforesated Decision to the Special Appellate Committee of the NAPOLCOM (p. 4, Ibid).

"7. On June 6, 1983, [SAC-Napolcom] issued a Resolution which reads as follows:

`On September 23, 1981, x x x Pat. Manuel Miralles filed a Notice of Appeal from the Decision finding him guilty of Grave Misconduct and ordering his dismissal from the service with prejudice. By virtue thereof, the record of the case was elevated to this Committee. Since then, however, up to the present or a period of more than one (1) year and seven (7) months, no appeal brief, memorandum or any pleading ha[s] been filed.

`WHEREFORE, the Appeal is hereby DISMISSED for abandonment and lack of interest.

`SO ORDERED.'

(Annex "J", Petition)

"8. On August 30, 1983, petitioner filed a Motion for Reconsideration with Manifestation praying that the dismissal of the Notice of Appeal be set aside and asking for time within which to submit his Memorandum.

"9. On September 27, 1983, petitioner submitted a Memorandum to [SAC-Napolcom].

"10. On April 26, 1984, [SAC-Napolcom] rendered its Decision affirming the Decision of the Adjudication Board.

"11. On June 30, 1984, petitioner filed a Motion for Reconsideration of the Decision.

"12. On October 30, 1989, [SAC-Napolcom] issued a Resolution denying his Motion for Reconsideration for lack of merit."[4]

Ruling of the Court of Appeals

The Court of Appeals ruled that petitioner's recourse was premature, because the SAC-Napolcom's decision should have been appealed first before the Civil Service Commission, pursuant to RA 6975.

Even if it would, as it did, rule on the merits, the CA held that petitioner's appeal must still fail. This ruling was made in view of the documents presented and the eyewitness account of Alejandro Lamsen, who testified that he had seen petitioner shoot Pat. Nilo Resurreccion. The CA further stated that petitioner had failed to substantiate his claim of self-defense.

Hence, this Petition.[5]

Issues

Petitioner presents the following issues for our consideration:

"I

Whether or not the Court of Appeals has jurisdiction to take cognizance of the instant case which was elevated directly from the Napolcom in view of the fact that the Napolcom decision sought to be reviewed was rendered before the effectivity of R.A. No. 6975, otherwise known as the PNP law, which provides that such decisions should first be elevated to the Civil Service Commission before the Court of Appeals.

"II

Whether or not the dismissal of the petitioner from the service can be sustained on the basis of the evidence on record notwithstanding that the same overwhelmingly supports the dismissal of the instant administrative charge against the petitioner.

"III

Whether or not the petitioner acted in self-defense when he killed Nilo Resurreccion."[6]

In the main, two issues are before us: (1) the propriety of the recourse to the CA and (2) the sufficiency of the evidence against petitioner.

The Court's Ruling

The Petition is not meritorious.

First Issue:

Propriety of the Recourse to the CA

Petitioner contends that the CA erred in ruling that the SAC-Napolcom ruling should have been appealed first to the DILG and then to the Civil Service Commission, pursuant to RA 6975. He maintains that the assailed resolution of SAC-Napolcom had been issued on October 20, 1989, but that the said law was promulgated only on January 2, 1991. That he received a copy of the Decision only on November 5, 1996 was due to the fault of the Napolcom. Hence, he posits that his appeal should be governed by the law in effect in 1989, not RA 6975 which became effective only in 1991.

We are not persuaded. It is clear that petitioner filed its appeal to the CA only on December 4, 1996. By then, the law in force, RA 6975, had already prescribed that appeals from the Decision of the Napolcom should be lodged first with the DILG and then with the Civil Service Commission. It did not matter that the assailed Napolcom ruling had been promulgated in 1989; petitioner did not receive it at the time and, thus, could not have filed the appeal then. In other words, his right to appeal had not yet vested on him. Verily, an appeal is a statutory right, and one who seeks to avail oneself of it must comply with the statute or the rule in effect when that right arose.[7] Since the rule on appeal had already been modified at the time he received the assailed Resolution, he should have followed the modified rule. We agree with the following disquisition of the CA:

"Although the Special Appellate Committee of the NAPOLCOM, which was then still operating under the old PC/INP set-up, affirmed his dismissal from the police service on April 26, 1984 and denied his motion for reconsideration on October 20, 1989, the petitioner received notice of the denial only on November 5, 1996,

and he filed the instant petition on December 4, 1996. By then, as aforesaid, R.A. 6975, an Act Establishing the Philippine National Police under a Reorganized Department of Interior and Local Government was already in full force and effect. Its Section 91 provides that, "The Civil Service Law and its implementing rules and regulations shall apply to all personnel of the department."

As expounded by the Supreme Court in *Cabada vs. Alunan III*, petitioner's remedy at the first instance is appeal to the Secretary of the DILG and, thereafter, to the Civil Service Commission. Thus:

"x x x Complementary laws on discipline of government officials and employees must then be inquired into[,] considering that in conformity with the mandate of the Constitution that the PNP must be national in scope and civilian in character[,] it is now a part, as a bureau, of the reorganized DILG. As such, it falls within the definition of the civil service in Section 2(1), Article IX-B of the Constitution. For this reason, Section 91 of the DILG Act of 1990 provides:

"SEC. 91. Application of Civil Service Laws. The Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department.

"The Civil Service Law referred to in Section 91 of the DILG Act of 1990 in Subtitle A, title I, Book V of the Administrative Code of 1987 (E.O. No. 292). Section 47 of Chapter 6 thereof provides, inter alia, That in cases where the decision rendered by a bureau or office is appealable to the Commission, the same may initially be appealed to the department and finally to the Commission.

"The rules and regulations implementing the Civil Service Law referred to in Section 91 of the DILG Act of 1990 is the Omnibus Rules Implementing Book V of Executive Order No. 292 known as the Administrative Code of 1987 promulgated by the CSC, Sections 31 and 32, Rule XIV of the said Rules provide as follows:

"SEC. 31. Except as otherwise provided by the Constitution or by law, the Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

"SEC. 32. The secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to Investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department, then to the Merit Systems Protection Board, and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned."[8]

In any event, petitioner's argument on this issue is moot, considering that the CA has nonetheless resolved the merits of the case.

Second Issue:

Sufficiency of Evidence

As a rule, administrative agencies' factual findings that are affirmed by the Court of Appeals are conclusive on the parties and not reviewable by this Court.[9] Petitioner, however, now asks this Court to review the ruling of the Napolcom hearing officer, the Napolcom Adjudication Board No. 15, the Napolcom Special Appellate Committee and the Court of Appeals, all finding him administratively liable for killing Pat. Nilo Resurreccion and Ernesto Mercurio. He further contends that these fact-finding administrative and judicial entities failed to appreciate his claim of self-defense.

Documentary Exhibits

Petitioner specifically maintains that the SAC-Napolcom "heavily relied on Exhibits `B' to `O', notwithstanding

the incontrovertible fact that they ha[d] not been properly identified by the persons who executed them. Hence, being hearsay, they are inadmissible in evidence." [10]

The argument is not persuasive. The bulk of these documents, [11] except Exhibits "B" and "C," are public documents consisting of reports made by government officials in the performance of their functions. [12] Hence, they are prima facie evidence of the facts they stated. [13] We agree with the CA's disquisition on this point which we quote:

"We readily agree with the petitioner but only insofar as Exhibits `B' and `C' are concerned because, without the affiants taking the witness stand[,] the contents of their respective sworn statements relating to the sequence of events that led to the incident in question and the other details thereof are hearsay for lack of cross-examination.

"On the other hand, Exhibits `D' to `O' are official reports of public officials of their official acts or proceedings and as such are public documents which are prima facie evidence of the truth of the facts stated therein.

"We are not, of course, saying that Exhibits `B' and `C', the sworn statements of eye-witness, are not public documents for in fact they, too, are but there can be no escaping the primordial rule that the testimony of witnesses shall be given orally in open court and under oath or affirmation. Otherwise put, although a document may be subsumed under the category of a public document, if it is excluded by an exclusionary rule, it will be denied admission as evidence."

Lamsen's Testimony

But even without these documents, petitioner would still be liable based on the testimony provided by Alejandro Lamsen, a taxi driver who testified that he had seen petitioner, who was his passenger at the time, pull out a gun and shoot Pat. Nilo Resurreccion three times in the chest. In open court, Lamsen identified and readily pointed to petitioner as the shooter and killer. The CA affirmed the finding of the Napolcom hearing officer, Adjudication Board and Special Appeal Committee.

Petitioner claims, however, that Lamsen was not credible because he subsequently recanted his testimony "during cross-examination." He argues: "However, during cross-examination before the Napolcom hearing officer, he recanted his previous statement and asseverated that upon hearing the first gunshot, he immediately alighted from the taxi cab and ran away towards the other street in the opposite direction, not looking back." [14]

If the assertion of petitioner were accurate, we would agree with his claim that the CA and the Napolcom misappreciated a crucial piece of evidence. He, however, failed to understand the plain import of the proceedings wherein the recantation had allegedly been made. Even a cursory perusal of the records indicates that it was not made on cross-examination.

On the contrary, the recantation was done when Lamsen appeared as a witness for the defense, after he had testified for the complainants and been cross-examined as such. His subsequent testimony for the defense was, however, rightly brushed aside, because he had failed to appear for cross-examination despite due notice. Indeed, the Napolcom Adjudication Board wrote: "However, he failed to appear for cross-examination despite due notice at the later stages of the formal investigation prompting the prosecution to move for the striking out of this portion of his testimony for the defense from the records and which motion was granted by the Hearing Officer." [15] As the CA succinctly stated, "Lamsen's testimony was stricken off the records for he never appeared for cross-examination." [16]

We note that petitioner continues to insist that the recantation was made on cross-examination, notwithstanding

the clear and explicit rulings to the contrary, issued by the CA and the Napolcom Special Appellate Committee, Adjudication Board and hearing officer. Worse, nowhere in his pleadings before us does he directly controvert or even recognize the existence of the aforementioned rulings. Rather, he blithely ignores so basic and so significant a point.

Third Issue:

Self-Defense

Equally unmeritorious is the contention that petitioner was able to establish the elements of self-defense. In this light, he insists that the CA and the Napolcom agencies should have given more credence to his version rather than to that of the complainant, especially because Lamsen had subsequently recanted his eyewitness testimony.

As stated at the outset, factual findings of administrative agencies, specially when affirmed by the CA, are conclusive on this Court. Petitioner has not given sufficient reason to overturn the rejection of his claim of self-defense. Apropos here are the following statements of the SAC-Napolcom quoted by the CA:

"The testimony of the taxi driver, Alejandro Lamsen, which was taken immediately after the incident by police investigator Det. Enrique Madura of Quezon City Police Station, NPD, is deemed a more reliable version of the incident than that of respondent[,] as it was [a] true narration of what actually transpired at the scene of incident, [the] witness having had no ample time to concoct a different story to favor the assailant at the time.

"The claim of respondent in this case that he shot the victim in utter self-defense of his own person is devoid of any credit. After having admitted the wounding or killing of his adversary, he is to be held liable for the offense unless he establishes satisfactorily the fact of legitimate self-defense. In this particular case, the claim of the respondent is not supported by strong and convincing evidence required in proving self-defense. It is a settle[d] jurisprudence that he who seeks justification for his act must prove it to be so by clear and convincing evidence.

"[The f]oregoing considered, the evidence of the prosecution that Pat Resurreccion was shot by the respondent for no justifiable reason is entitled to much weight and credit, the victim at the time being in the act of performing a police duty."

Dismissal of Criminal Case

Petitioner further contends that the Quezon City RTC's dismissal of the criminal case for homicide instituted against him was "conclusive of his innocence." [17]

His argument is bereft of merit. An administrative proceeding is different from a criminal case and may proceed independently thereof. Indeed, the quantum of proof in the latter is different, such that the verdict in one need not necessarily be the same as in the other. In a recent case, the Court explained this difference as follows: [18]

"It should be emphasized that a finding of guilt in the criminal case will not necessarily result in a finding of liability in the administrative case. Conversely, respondent's acquittal does not necessarily exculpate him administratively. In the same vein, the trial court's finding of civil liability against the respondent will not inexorably lead to a similar finding in the administrative action before this Court. Neither will a favorable disposition in the civil action absolve the administrative liability of the lawyer. The basic premise is that criminal and civil cases are altogether different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa."

WHEREFORE, the Petition is hereby DENIED. The assailed Decision is AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

Sandoval-Gutierrez, J., no part - member of CA Div. which rendered the assailed decision.

[1] Rollo, pp. 53-71.

[2] Former Special Seventh Division. The Decision was written by Justice Salvador J. Valdez Jr., with the concurrence of Justices Angelina S. Gutierrez (chairman and now a member of this Court) and Delilah Vidallon-Magtolis (member).

[3] CA Decision, p. 19; rollo, p. 70.

[4] CA Decision, pp. 2-5; rollo, pp. 54-57. The CA adopted the narration of facts made by the office of the solicitor general in its Comment before it.

[5] This case was deemed submitted for resolution on September 14, 2000, upon receipt by this Court of petitioners' Memorandum signed by Attys. Arceli A. Rubin, Teresita S. de Guzman and Ramon E.A. Gatchalian, all from the Public Attorney's Office. Earlier, the OSG filed a Motion praying that its Comment be treated as its Memorandum. The Comment was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Maria Aurora P. Cortes and Sol. Rex Bernardo L. Pascual.

[6] Memorandum for Petitioner, pp. 4-5; rollo, pp. 249-250. Upper case used in the original.

[7] See Lazaro v. CA, GR No. 137761, April 6, 2000.

[8] CA Decision, pp. 6-8; rollo, pp. 58-60.

[9] See Vda. De Nazareno v. CA, 257 SCRA 589, June 26, 1996.

[10] Petitioner's Memorandum, p. 9; rollo, p. 254.

[11] The documents are as follows:

"Exhibit `B'

Sworn Statement of Mr. Roberto

Caguioa y Sagum

"Exhibit `C'

Sworn Statement of Pat. Filipino

de Leon y Bundang

"Exhibit `D'

Arrest Report of Pat. Filipino de Leon

"Exhibit `E'

Medico-Legal Certificate of N.V.

Resurreccion

"Exhibit `F'

Necropsy Report No. N-77-1682

submitted by Dr. Romeo V. Bertulfo

"Exhibit `G'
Necropsy Report No. N-77-1683

submitted by Dr. Bertulfo

"Exhibit `H'
Chemistry Report No. 77-173

"Exhibit `I'
Chemistry Report No. 77-7141

"Exhibit `J'
Chemistry Report No. C-77-715

"Exhibit `K'
Chemistry Report No. C-77-723

"Exhibit `L'
Chemistry Report No. C-1237-77

"Exhibit `M'
Chemistry Report No. C-12471-77

"Exhibit `N'
Chemistry Report No. C-1248-77

"Exhibit `O'
Ballistic Report No. B-165-77"

[12] Sec. 19 (a) of Rule 132 of the Rules of Court provides that public documents are "[t] written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country."

[13] Sec. 19, Rule 132 of the Rules of Court, reads as follows: "Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

[14] Petitioner's Memorandum, p. 10; rollo, p. 255. In his Petition, petitioner also maintained that Lamsen had contradicted his testimony "on cross-examination." (Petition for Review, p. 3; rollo, p. 33.)

[15] Decision of the Napolcom Adjudication Board, p. 8; rollo, p. 118.

[16] CA Decision, p. 17; rollo, p. 68.

[17] Petitioner's Memorandum, p. 14; rollo, p. 259.

[18] *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*, 315 SCRA 406, 413, September 29, 1999, per curiam.

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