

CELSA P. ACUÑA, PETITIONER, VS. DEPUTY OMBUDSMAN FOR LUZON, PEDRO PASCUA AND RONNIE TURLA, (ANGELES CITY NATIONAL TRADE SCHOOL), RESPONDENTS.

G.R. NO. 144692. January 31, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari[1] of the Resolution dated 4 April 2000 and the Order dated 19 June 2000 of the Deputy Ombudsman for Luzon. The 4 April 2000 Resolution dismissed for lack of probable cause the complaint for perjury of petitioner Celsa P. Acuña against respondents Pedro Pascua and Ronnie Turla. The 19 June 2000 Order denied the motion for reconsideration.

The Facts

Petitioner Celsa P. Acuña (“petitioner”) is a former teacher of the Angeles City National Trade School (“ACNTS”) in Angeles City, Pampanga. Respondent Pedro Pascua (“respondent Pascua”) was ACNTS’ Officer-In-Charge while respondent Ronnie Turla (“respondent Turla”) was a member of its faculty.[2]

On 13 July 1998, a certain Erlinda Yabut (“Yabut”), another ACNTS teacher, together with other school personnel, requested a dialogue with respondent Pascua on some unspecified matter. Respondent Pascua agreed to the request and the meeting took place on 16 July 1998. Respondent Turla attended the meeting upon respondent Pascua’s directive. Petitioner, whom Yabut apparently invited, also attended the meeting.

As an offshoot to an incident during the 16 July 1998 meeting, petitioner charged respondent Pascua with misconduct (“OMB-ADM-1-99-0387”) and with violation of Article 131[3] of the Revised Penal Code (“OMB 1-99-903”) before the Office of the Ombudsman (“Ombudsman”).[4] In his sworn counter-affidavit in OMB-ADM-1-99-0387, respondent Pascua alleged, among others, that: (1) OMB-ADM-1-99-0387 is a “rehash and a duplication with a slight deviation of fact” of an administrative case pending with the Department of Education, Culture and Sports (“DECS”) which petitioner and Yabut earlier filed against him and (2) Yabut had no authority to invite to the 16 July 1998 meeting a non-employee of ACNTS like petitioner considering that he (respondent Pascua) was the one who called the meeting.[5] Respondent Pascua also submitted a sworn statement of respondent Turla confirming that respondent Pascua and not Yabut called the 16 July 1998 meeting.[6]

The Ombudsman dismissed OMB-ADM-1-99-0387 and OMB 1-99-0903.

Contending that private respondents perjured themselves in their sworn statements in OMB-ADM-1-99-0387, petitioner charged private respondents with perjury (“OMB 1-99-2467”) before the office of the Deputy Ombudsman for Luzon (“public respondent”). Petitioner alleged that private respondents were liable for perjury because: (1) the complaint she and Yabut filed against respondent Pascua before the Civil Service Commission, later endorsed to the DECS, was not “the same” as her complaint in OMB-ADM-1-99-0387 and (2) it was Yabut

and not respondent Pascua who called the 16 July 1998 meeting.[7]

Private respondents denied the charge against them and sought the dismissal of the complaint.[8]

The Ruling of the Public Respondent

Public respondent dismissed petitioner's complaint in his 4 April 2000 Resolution,[9] thus:

Upon careful evaluation of the case record, we find no evidence to indict respondents for perjury.

xxxx

It could not be established by the evidence on record that it was Erlinda Yabut who called the meeting on July 16, 1998 and invited complainant. Annex "B-1" xxx of the complaint is the letter of Erlinda Yabut to Dr. Pedro Pascua, dated July 13, 1998, which shows that Ms. Yabut was requesting respondent to have a dialogue (sic). The letter states:

"We, the undersigned would like to request your good office to allow us to have a dialogue on Thursday, July 1[6], to once and for all ventilate our complaints/observations and also listen to the rebuttal of the other side.

It is the desire of everybody who attended the meeting last time that whatever is the outcome of this confrontation will be the basis of the next appropriate step.

We would like to request the incoming Administrator or somebody from the DECS to act as moderator."

Pursuant to such circumstance, respondent Pascua stated, among others, in his counter-affidavit in OMB-ADM-1-99-0387 that:

"5. Be that as it may, I vehemently deny the charge that I prevented Complainant Celsa Acu[ñ]a from testifying against Mrs. Amelia Yambao on July 16, 1998 the truth of the matter being that there was no hearing or investigation conducted or called by the undersigned on said date but a dialogue among the teachers of Angeles City National Trade School which I previously headed. Mrs. Acu[ñ]a at that time was not a teacher to attend the said dialogue, thus I stated openly on said occasion that I will not start the meeting if there are outsiders, and Mr. ROGELIO GUTIERREZ asked herein Complainant to step out of the room so we could start the dialogue, xxx;

6. I also deny the charge that she was invited by Mrs. Erlinda Yabut, co-complainant of hers in the DECS Administrative case, because I was the one who called for that dialogue and not Mrs. Yabut, thus I never gave any authority to anyone to invite any person who was not a member of the school faculty or an employee thereof."

Clearly, the letter of Ms. Yabut and the aforequoted counter-affidavit of respondent Pascua belie the commission of perjury since there was no deliberate assertion of falsehood on a material matter.

Respondent Ronnie Turla could not likewise be indicted for the crime charged. Since it was respondent Pascua who called him to that meeting, it would be truthful of him to state that way. There was also no willful and deliberate assertion of falsehood on the part of respondent Ronnie Turla.[10]

Petitioner sought reconsideration but public respondent denied her motion in the 19 June 2000 Order.

Hence, petitioner filed this petition. Petitioner contends that public respondent committed grave abuse of discretion in dismissing her complaint for lack of probable cause.[11]

Public respondent, in his Comment, maintains that he did not commit grave abuse of discretion in dismissing petitioner's complaint in OMB 1-99-2467.[12]

In their Comment, private respondents claim that petitioner filed this petition out of time. Hence, this petition

should be dismissed outright. On the merits, private respondents submit that public respondent correctly dismissed the perjury charge against them.[13]

In her Reply, petitioner counters that she timely filed her petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure (“Rule 65”).[14]

The Issues

The petition raises these issues:

- Whether petitioner filed the petition on time; and
- Whether public respondent committed grave abuse of discretion in dismissing the complaint in OMB 1-99-2467 for lack of probable cause.

The Ruling of the Court

The petition, while filed on time, has no merit.

The Petition was Filed on Time

Private respondents contend that petitioner filed this petition beyond the ten-day period provided in Section 27 of Republic Act No. 6770.[15] Section 27 states in part:

Effectivity and Finality of Decisions. — xxxx

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court. (Emphasis supplied)

The contention has no merit. Section 27 is no longer in force because this Court in *Fabian v. Desierto*[16] declared it unconstitutional for expanding the Court’s jurisdiction without its consent in violation of Article VI, Section 30 of the Constitution. Furthermore, Section 27 relates only to appeals from rulings of the Ombudsman in administrative disciplinary cases. It does not apply to appeals from the Ombudsman’s rulings in criminal cases such as the present case.[17]

The remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for certiorari under Rule 65. Thus, we held in *Tirol, Jr. v. Del Rosario*:[18]

The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party [in administrative cases] is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman xxx is tainted with grave abuse of discretion, amounting to lack [or] excess of jurisdiction. An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. (Emphasis supplied)

Petitioner precisely availed of such remedy when she filed this petition for certiorari under Rule 65 alleging that public respondent gravely abused his discretion in dismissing her complaint against private respondents. Under Section 4 of Rule 65, as amended, petitioner had 60 days from her receipt of the 19 June 2000 Order within which to file this petition. Petitioner received a copy of the 19 June 2000 Order on 13 July 2000. Thus, petitioner had until 11 September 2000 within which to file this petition. Petitioner did so on 11 August 2000. Hence, petitioner

filed this petition on time.

The Public Respondent did not Gravelly Abuse His Discretion in Dismissing OMB 1-99-2467

We reiterate this Court's policy of non-interference with the Ombudsman's exercise of his constitutionally mandated prosecutory powers.[19] We explained the reason for such policy in *Ocampo, IV v. Ombudsman*: [20]

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

The Court, in the present case, finds no reason to deviate from this long-standing policy.

Petitioner contends that public respondent committed grave abuse of discretion in dismissing her complaint for perjury for lack of probable cause. The contention is untenable. Probable cause, as used in preliminary investigations, is defined as the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." [21] The elements of perjury under Article 183 [22] of the Revised Penal Code are:

(a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and, (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose. [23] (Emphasis supplied)

Public respondent correctly ruled that the first and third elements are absent here in that private respondents' statements in their counter-affidavits in OMB-ADM-1-99-0387 were not material to that case nor do they constitute willful and deliberate assertion of falsehood.

On the Element of Materiality

In prosecutions for perjury, a matter is material if it is the "main fact which was the subject of the inquiry, or any circumstance which tends to prove that fact xxx." [24] To hold private respondents liable, there must be evidence that their assailed statements in OMB-ADM-1-99-0387 were the subject of inquiry in that case. Petitioner has presented no such evidence. The records are hardly helpful, as petitioner did not furnish the Court a copy of her complaint in OMB-ADM-1-99-0387.

What is before the Court is a portion of respondent Pascua's counter-affidavit in that case as quoted by public respondent in his 4 April 2000 Resolution. Admittedly, some inference is possible from this quoted material, namely, that the basis of petitioner's complaint in OMB-ADM-1-99-0387 is that respondent Pascua prevented her from taking part in the 16 July 1998 meeting. However, it would be improper for the Court to rely on such inference because the element of materiality must be established by evidence and not left to inference. [25]

At any rate, petitioner's complaint for perjury will still not prosper because respondent Pascua's statement — that OMB-ADM-1-99-0387 is significantly the same as petitioner's and Yabut's administrative complaint against respondent Pascua before the DECS — is immaterial to the inferred issue.

On the Element of Deliberate Assertion of Falsehood

The third element of perjury requires that the accused willfully and deliberately assert a falsehood. Good faith or lack of malice is a valid defense.[26] Here, the Court finds that respondent Pascua's statement in his counter-affidavit in OMB-ADM-1-99-0387 that he called the 16 July 1998 meeting does not constitute a deliberate assertion of falsehood. While it was Yabut and some unidentified ACNTS personnel who requested a dialogue with respondent Pascua, it was respondent Pascua's consent to their request which led to the holding of the meeting. Thus, respondent Pascua's statement in question is not false much less malicious. It is a good faith interpretation of events leading to the holding of the meeting.

Regarding respondent Pascua's allegation in his counter-affidavit in OMB-ADM-1-99-0387 that petitioner's complaint was a mere "rehash and duplication with a slight deviation of fact" of the DECS administrative case petitioner and Yabut filed against respondent Pascua, petitioner has not shown why this is false. Petitioner again did not furnish the Court a copy of her and Yabut's complaint with the DECS.

Respondent Turla's statement in OMB-ADM-1-99-0387 that respondent Pascua called the 16 July 1998 meeting was a mere reiteration of what respondent Pascua told him. Consequently, it was correct for public respondent to hold that since respondent Turla merely repeated what he heard from respondent Pascua, he could not be held liable for making a false and malicious statement.

There is grave abuse of discretion where power is exercised in arbitrary or despotic manner by reason of passion or hostility. The abuse must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty or to act at all in contemplation of law.[27] No such conduct can be imputed on public respondent. Public respondent disposed of petitioner's complaint consistent with applicable law.

WHEREFORE, we DISMISS the petition. The Resolution dated 4 April 2000 and the Order dated 19 June 2000 of respondent Deputy Ombudsman for Luzon are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] Respondents Pascua and Turla are referred to as "private respondents."

[3] "Prohibition, interruption, and dissolution of peaceful meetings. — The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who, without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same.

The same penalty shall be imposed upon any public officer or employee who shall hinder any person from joining any lawful association or from attending any of its meetings.

The same penalty shall be imposed upon any public officer or employee who shall prohibit or hinder any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances."

[4] Petitioner's complaints in OMB-ADM-1-99-0387 and OMB 1-99-0903 are not on record.

[5] Rollo, pp. 42-43.

[6] Ibid., pp. 40-41.

[7] Ibid., p. 37.

[8] Ibid., pp. 38-39.

[9] Deputy Ombudsman for Luzon Jesus F. Guerrero approved the 4 April 2000 Resolution as prepared by Donna B. Pascual, Graft Investigation Officer II, with Emilio A. Gonzales III, Director, recommending approval.

[10] Rollo, pp. 31-32.

[11] Ibid., pp. 9-19.

[12] Ibid., pp. 69-80.

[13] Ibid., pp. 56-58.

[14] Ibid., pp. 83-91.

[15] The Ombudsman Act of 1989.

[16] 356 Phil. 787 (1998). Reported as Fabian v. Hon. Desierto.

[17] Nava v. Commission on Audit, 419 Phil. 544 (2001).

[18] 376 Phil. 115 (1999). Reported as Tirol, Jr. v. Justice Del Rosario.

[19] Alba v. Hon. Nitorreda, 325 Phil. 229 (1996).

[20] G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725.

[21] Cruz, Jr. v. People, G.R. No. 110436, 27 June 1994, 233 SCRA 439.

[22] “False testimony in other cases and perjury in solemn affirmation. — The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.”

[23] Saavedra, Jr. v. Department of Justice, G.R. No. 93173, 15 September 1993, 226 SCRA 438.

[24] United States v. Estraña, 16 Phil. 520 (1910).

[25] Ibid.

[26] People v. Abaya, 74 Phil. 59 (1942).

[27] Alafritz v. Nable, 72 Phil. 278 (1941).

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