

JESUS CLARITO ESPÍÑA, PETITIONER, V.S. MIGUEL CERUJANO, ALFREDA TINGKINGCO, AND SENENCIO CERUJANO, JR., RESPONDENTS.

G.R. No. 149377. March 25, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In Criminal Case No. 1276, for Robbery in Band with Multiple Homicide, Branch 22 of the Lao-ang, Northern Samar Regional Trial Court convicted as charged all the accused therein, except a certain Matea Infante, and imposed upon them the death penalty.[1]

On automatic review of the case, this Court affirmed the conviction but commuted the penalty to reclusion perpetua.[2]The decision became final and executory on May 7, 1987.[3]

On June 14, 1993, petitioner, Jesus Clarito Espiña (sometimes spelled as Espina), a Prosecutor of the Office of the Public Prosecutor of Lao-ang, Northern Samar, filed a Motion to Dismiss Criminal Case No. 1276 on the ground that the Anti-Subversion Law had been repealed.[4] On even date, the trial court granted petitioner's motion and accordingly dismissed Criminal Case No. 1276.[5]

Respondents, Miguel Cerujano, Alfreda Tingkingco, and Senencio Cerujano, Jr., thus filed an administrative complaint for conduct prejudicial to the best interest of the service against petitioner before the Department of Justice (DOJ), contending that:

x x x The grounds relied upon by Public Prosecutor Jesus Clarito L. Espina ha[ve] nothing to do with the case at all, as the case decided with finality by the Court is Robbery in Band with Multiple Homicide and not a violation of the Anti-Subversion Law as advanced in the Motion to Dismiss. By his acts, Public Prosecutor Jesus Clarito L. Espina, aside from showing his ignorance of the law and the Rules of Court, had maligned the good image of the Public Attorney's Office and the Department of Justice.

Further, despite the hibernation of RTC Lao-ang, Northern Samar by not executing the decision on the said case despite the lapse of several years since its receipt of the records of the case, in a rather doubtful Order, issued the very day the Motion to Dismiss was filed, Hon. Judge Mateo M. Leanda of RTC Branch XII, Lao-ang, Northern Samar, dismissed the case on the basis of the Motion to Dismiss filed by Public Prosecutor Jesus Clarito L. Espina, without even giving the complaining witness' party a notice much less a day in Court to comment or to present its side which is a blatant and grave violation of due process. x x x

As a consequence of the orchestrated acts of RTC Branch XXII of Lao-ang, Northern Samar and Public Prosecutor Jesus Clarito L. Espina, the accused who were responsible for the death of at least four persons, robbery of properties worth P179,115.00 and of inflicting bodily harm o[n] many other persons, for which they were sentenced with finality to a penalty of death which was commuted to Reclusion Perpetua by the Supreme Court, are now freely roaming around. x x x[6] (Emphasis and underscoring supplied)

In his Answer[7]to the administrative complaint, petitioner, claiming good faith, alleged that it was the trial judge,

Judge Mateo M. Leanda, who asked him to file the Motion to Dismiss upon the repeal of the Anti-Subversion Law and pursuant to DOJ Memorandum Circular No. 10 mandating all government prosecutors to file the proper motions to dismiss Anti-Subversion Law criminal cases.[8]

Petitioner further alleged that while he informed the trial judge that the accused had been convicted of Robbery with Multiple Homicide, and not of violating the Anti-Subversion Law, the judge assured him that the Motion to Dismiss “would not touch on the case of Robbery with Multiple Homicide x x x but only on the Anti-Subversion [L]aw”;[9] that on his request, the judge prepared and handed to him the Motion to Dismiss on which he (petitioner) affixed his signature; and that he was not in fact informed of the order dismissing the case and came to know of it only when he received the administrative complaint against him.

The Secretary of Justice later formally charged petitioner with conduct grossly prejudicial to the [best] interest of the service.[10] During the formal investigation of the case, petitioner claimed that he

x x x exerted efforts to file a Motion to Annul/Revoke the said Order of June 14, 1993 x x x of Judge Leanda, as well as for the re-arrest of the four (4) [sic] convicted accused x x x [but] the same was denied, and was x x x refer[red] to the Supreme Court. x x x[11]

In a Supplemental Memorandum, petitioner argued that to his understanding, In a Supplemental Memorandum, petitioner argued that to his understanding,

x x x Criminal Case No. 1276 [was] covered by Memorandum Circular No. 10 notwithstanding the fact that the accused in that criminal case were charged and convicted of “ROBBERY IN BAND WITH MULTIPLE HOMICIDE”. The AMENDED INFORMATION xxx filed on July 08, 19[8]1 and the SENTENCE rendered on March 21, 1986 xxx obviously show that all the accused were members of the NEW PEOPLE’S ARMY [NPA] judicially known as the armed group of the COMMUNIST PARTY OF THE PHILIPPINES outlawed by the Anti-Subversion Law (RA 1700).

Reading and rereading People v. Lava[12] x x x and the jurisprudence cited therein x x x led the respondent Prosecutor I to opined [sic] that the crimes of robbery in band with multiple homicide are included in the crime of “rebellion” staged by all the accused in Criminal Case No. 1276 covered by and within the scope of the Anti-Subversion Law. x x x[13] (Emphasis and underscoring supplied) x x x and the jurisprudence cited therein x x x led the respondent Prosecutor I to opined [sic] that the crimes of robbery in band with multiple homicide are included in the crime of “rebellion” staged by all the accused in Criminal Case No. 1276 covered by and within the scope of the Anti-Subversion Law. x x x (Emphasis and underscoring supplied)

After investigation, the Secretary of Justice found petitioner liable for grave misconduct and recommended to the President his dismissal from the service with the corresponding accessory penalties.[14]

On March 30, 1999, President Estrada issued Administrative Order No. 62[15] dismissing petitioner from the service.

Petitioner filed a Motion for Reconsideration[16] arguing, at all events, that he was entitled to a mitigation of the penalty considering that the offense was his first in his 33 years of government service. His motion was denied.

Petitioner thus filed a Petition for Review[17] before the Court of Appeals which denied the same.[18]

On petitioner’s plea for the mitigation of his penalty, the Court of Appeals held:

. . . [T]his contention of the petitioner is wrong considering that his questioned act is not covered by Section 23(t) Rule XIV of the Omnibus Rules, an act prejudicial to the interest of service, because actually, petitioner was found guilty of grave misconduct, which guilt was affirmed by public respondent in his Resolution dated November 29, 1999. Thus, the penalty is well within the provision of Section 23 (c) of Rule XIV of the

Omnibus Rules in relation to Section 8, Rule XIV of the same Omnibus Rules, which is quoted hereunder for ready reference:

“SEC. 23. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of said acts on the government service.

The following are grave offenses with its corresponding penalties.

(a) x x x

x x x x

(c) grave misconduct (1st Offense, Dismissal) (Emphasis and underscoring supplied.).[19]

His Motion for Reconsideration[20] having been denied,[21] petitioner comes to this Court via Petition for Review on Certiorari,[22] arguing that he was not afforded due process because he was found guilty and penalized for grave misconduct, albeit the charge filed against him was for conduct grossly prejudicial to the best interest of the service.[23] And he reiterates his plea for mitigation of his penalty, the offense being his first during his 33 years of government service.[24]

During the pendency of the case or on October 6, 2004, petitioner filed with this Court a Manifestation[25] stating, among other things, that he had already retired from the service.[26]

The petition is impressed with merit.

In *Civil Service Commission v. Lucas*, [27] this Court held:

We sustain the ruling of the Court of Appeals that (a) a basic requirement of due process is that a person must be duly informed of the charges against him and that (b) a person can not be convicted of a crime which he was not charged.

Administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings.[28] (Emphasis and underscoring supplied)

Amplifying the above-cited ruling, this Court, in *Civil Service Commission v. Ledesma*,[29] held:

x x x In *[Civil Service Commission v. Lucas]*, the CSC found Lucas guilty of grave misconduct though the charge against him was for simple misconduct only. The Court held that the CSC’s verdict in *Lucas* violated the basic requirements of due process. The Court ruled that even in an administrative proceeding Lucas had the right to be informed of the charges against him, as well as the right not to be convicted of an offense for which he was not charged.

Misconduct is “a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.” The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave.

Grave misconduct necessarily includes the lesser offense of simple misconduct. A person charged with simple misconduct cannot be held liable for the more serious offense of grave misconduct because he will be deprived of his constitutional right to be informed of the charges against him. A charge of simple misconduct does not give him notice that he must traverse and if necessary rebut not only the charge of misconduct, but also the element of corruption or willful intent to violate the law or established rules. This is the situation in the case of *Civil Service Commission v. Lucas*. [30] (Emphasis and underscoring supplied)

In the case at bar, petitioner cannot be held liable for grave misconduct under a charge of “conduct grossly prejudicial to the best interest of the service.” Conduct grossly prejudicial to the best interest of the service does not necessarily include the elements of grave misconduct. The word “gross” connotes “something beyond measure; beyond allowance; not to be excused; flagrant; shameful” while “prejudicial” means “detrimental or derogatory to a party; naturally, probably or actually bringing about a wrong result.”[31]

Conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.

Under the Civil Service law and rules, there is no concrete description of what specific acts constitute the grave offense of conduct grossly prejudicial to the best interest of the service, although this Court has considered the following acts or omissions, among others, as such: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safe keep public records and property, making false entries in public documents and falsification of court orders.[32]

While grave misconduct and conduct grossly prejudicial to the best interest of the service are both grave offenses under the Omnibus Rules Implementing Book V of Executive Order No. 292, grave misconduct has a heavier penalty. Grave misconduct is penalized by dismissal from service.[33] On the other hand, conduct grossly prejudicial to the best interest of the service is penalized by dismissal from service only on the second offense; on the first offense, the penalty is suspension for six months and one day, to one year.[34]

The record does not show that any of the additional elements to qualify the charge of conduct grossly prejudicial to the best interest of the service to grave misconduct had been established.

That petitioner signed the Motion to Dismiss upon the trial judge’s request does not absolve him of liability, however. As stated in the Resolution of the Office of the President denying petitioner’s motion for reconsideration, such defense “all the more rubs in the fact that respondent has no business being a prosecutor if he will merely act as a puppet for unscrupulous judges.”[35]

It bears recalling that a public prosecutor is the representative not of an ordinary party to a controversy but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all and whose interest, therefore, in a criminal prosecution is that justice shall be done,[36] and that the guilty shall not escape nor the innocent suffer[37] As the representative of the State, the public prosecutor has the duty to take all steps to protect the rights of the People in the trial of an accused.[38] That petitioner relied on the trial judge’s assurance that the Motion to Dismiss would touch only on the Anti-Subversion Law aspect of the case betrays his ignorance. For even if the accused therein were indeed members of the New People’s Army, they were charged not for subversion but for Robbery in Band with Multiple Homicide.

Petitioner’s reliance on *People v. Lava* is misplaced, for the Court therein reiterated that it is rebellion, not subversion, which absorbs the crimes committed as means in furtherance thereof.[39]

The penalty for conduct grossly prejudicial to best the interest of the service is, to reiterate, suspension for six months and one day to one year for the first offense, and dismissal from service for the second.

Rule XIV, Section 18 of the Omnibus Rules Implementing Book V of Executive Order 292 provides:

The imposition of the penalty shall be made in accordance with the manner herein below detailed, provided the penalty attached to the offense is divisible into minimum, medium, and maximum, to wit:

(a) The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present;

(b) The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present or when both are present they equally offset each other;

(c) The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present;

(d) Where aggravating and mitigating circumstances are present, the minimum of the penalty shall be applied where there are more mitigating circumstances present; the medium period if the circumstances equally offset each other; and the maximum where there are more aggravating circumstances.

The offense committed by petitioner was his first. And the Court considers his 33 years of service as mitigating.[40] The imposition of suspension for six months and one day is thus appropriate. Petitioner having already retired from the service, however, in lieu of suspension, the imposition of a fine equivalent to his salary for six months is in order.[41]

WHEREFORE, the petition is PARTIALLY GRANTED. The December 22, 2000 decision of the Court of Appeals is MODIFIED. Petitioner, Jesus Clarito Espiña, is found GUILTY of conduct grossly prejudicial to the best interest of the service. Having retired during the pendency of the case, he is FINED in the amount equivalent to his salary for six months.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Chico-Nazario, and Velasco, Jr., JJ., concur.

[1] Office of the President Records, pp. 8-18 (pagination of the Office of the President Records folder runs backwards, and the page numbers are written on the dorsal portions of the pages).

[2] Id. at 6.

[3] Id. at 7.

[4] Vide id. at 3-4, Republic Act No. 1700.

[5] Office of the President Records, pp. 1-2.

[6] Id. at 20-21.

[7] Id. at 23-24.

[8] Id. at 101.

[9] Id. at 24.

[10] Id. at 25.

[11] Id. at 61. Vide pp. 53-55.

[12] 138 Phil. 77 (1969).

[13] Office of the President Records, pp. 103-104.

[14] Id. at 113.

[15] Id. at 119-121.

[16] Id. at 125-135.

[17]CA rollo, pp. 21-38.

[18]Decision dated December 22, 2000 penned by Court of Appeals Associate Justice Mercedes Gozo-Dadole, with the concurrence of then-Court of Appeals Associate Justice Ma. Alicia Austria-Martinez and Associate Justice Hilarion L. Aquino. Id. at 182-193.

[19]Id. at 191-192.

[20]Id. at 196-199.

[21]Id. at 209.

[22]Rollo, pp. 12-23.

[23]Id. at 15-18.

[24]Id. at 18.

[25]Id. at 181-192.

[26]Id. at 183, 189.

[27]361 Phil. 486 (1999).

[28]Id. at 491 (citations omitted).

[29]G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[30]Id. at 603 (citations omitted).

[31]Jugueta v. Estacio, A.M. No. CA-04-17-P, November 25, 2004, 444 SCRA 10, 19.

[32]Vide Philippine Retirement Authority v. Rupa, 415 Phil. 713, 720-721 (2001).

[33]Vide Civil Service Commission Resolution No. 91-1631, Rule XIV, Section 23 (c). This provision has been substantially retained in Rule IV, Section 52 (A) (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service, which repealed Civil Service Commission Resolution No. 91-1631 effective September 27, 1999.

[34]Vide Civil Service Commission Resolution No. 91-1631, Rule XIV, Section 23 (t). The designation of the offense in Rule IV, Section 52 (A) (20) of the Revised Uniform Rules on Administrative Cases in the Civil Service, which repealed Civil Service Commission Resolution No. 91-1631 effective September 27, 1999, has been changed to “conduct prejudicial to the best interest of the service” but the penalty is the same.

[35]Office of the President Records, p. 157.

[36]Vide Paredes, Jr. v. Sandiganbayan, Second Division, 322 Phil. 709, 725 (1996) (citation omitted).

[37]Vide Tan, Jr. v. Judge Gallardo, 165 Phil. 288, 294 (1976).

[38]Vide People v. Arcilla, 326 Phil. 774, 782 (1996).

[39]Vide 138 Phil. 77, 105-110 (1969).

[40]Vide Civil Service Commission v. Lucas, 361 Phil. 486, 491 (1999); Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission, G.R. No. 100599, April 8, 1992, 207 SCRA 801, 808.

[41]Vide Civil Service Commission Resolution No. 91-1631, Rule XIV, Section 19: “The penalty of transfer, or demotion, or fine may be imposed instead of suspension from one month and one (1) day to one (1) year except in

case of fine which shall not exceed six (6) months”; Carreon v. Ortega, A.M. No. P-05-1979, November 27, 2006, 508 SCRA 136, 144-145.

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