

FELIPE L. MELCHOR, PETITIONER, VS. GERTY R. GIRONELLA, RESPONDENT.

G.R. No. 151138. February 16, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks to nullify (a) the Decision[1] dated December 29, 2000, of the Court of Appeals in CA G.R. SP No. 51596, which annulled the decision of the Ombudsman in OMB-ADM 1-97-0075; and (b) the Resolution[2] dated December 13, 2001, denying the petitioner's motion for reconsideration.

The case stemmed from the administrative complaint for immorality before the Department of Education Culture and Sports (DECS) and the criminal complaint for bigamy before the Provincial Prosecutor, both filed by the petitioner Felipe L. Melchor against respondent Gerty R. Gironella.

In the bigamy case, respondent Gironella presented a certification from the Local Civil Registry that her first husband, Jimmy Santiago, was already dead. On April 18, 1994, the complaint was dismissed.[3]

In the administrative complaint, the DECS director initially found respondent guilty of immorality.[4] Respondent filed a motion for reconsideration and attached the death certificate of Jimmy Santiago issued by Local Civil Registrar Eliseo Firmalo on May 18, 1994.[5] Consequently, the DECS reversed its ruling and acquitted the respondent on October 31, 1996.[6]

On February 17, 1997, petitioner Melchor filed before the Office of the Ombudsman, an administrative complaint for dishonesty and conduct unbecoming a public officer against respondent, respondent's second husband (Jose Gironella), and Local Civil Registrar Eliseo Firmalo. The complaint involved (1) the issuance of a falsified death certificate and (2) its use in a judicial proceeding.

In the proceedings before the Ombudsman, the petitioner presented a death certificate issued by the National Census and Statistics Office (NCSO) bearing the same LCR number of the entry of death as Jimmy Santiago's death certificate. He also presented the death certificates of the succeeding entries which were chronologically numbered. Since the NCSO had no record of the death of Jimmy Santiago, petitioner contended that Eliseo Firmalo, in connivance with respondent, must have merely inserted the entry of death of Jimmy Santiago in the register. Petitioner also presented a joint-affidavit of Renerio S. Maligo, Sr. and Cristita Maligo-Prado, alleged half-brother and half-sister of Jimmy Santiago, stating that Jimmy Santiago is still alive.[7]

On June 10, 1998, the Ombudsman rendered judgment finding respondent and Firmalo guilty of the charge and imposed the penalty of dismissal from service, but dismissed the complaint against Jose Gironella as he was not a public officer.[8]

Respondent and Firmalo seasonably filed a petition for review on certiorari with the Court of Appeals. They averred that the records of the NCSO were incomplete. Moreover, the very same NCSO certification stated that further verification may be requested from the concerned civil registrar. They also stressed that petitioner failed to

establish the existence of conspiracy. They also maintained that it was the regular courts, not the Ombudsman, who has the power to decide if the death certificate was falsified. Lastly, they claimed that the action had already prescribed as it was filed beyond the one-year period provided in Section 20[9] of Republic Act No. 6770.[10]

On December 29, 2000, the Court of Appeals ruled that the findings of the Ombudsman were speculative and exonerated respondent and Firmalo for lack of substantial evidence.[11] Petitioner moved for reconsideration but was denied by the appellate court.

Hence, this appeal by certiorari alleging that the Court of Appeals erred in holding that

- . . . THE FINDINGS OF FACTS OF THE OMBUDSMAN IN OMB-ADM-1-97-0075 ARE MERELY CONJECTURAL AND THE QUANTUM OF SUBSTANTIAL EVIDENCE NECESSARY TO CONVICT THE RESPONDENT IN AN ADMINISTRATIVE COMPLAINT IS LACKING.

- . . . PRESCRIPTION HAS SET IN WHEN THE OMBUDSMAN TOOK ACTION ON THE ADMINISTRATIVE COMPLAINT OF DISHONESTY AND CONDUCT UNBECOMING OF A PUBLIC OFFICER AGAINST THE RESPONDENT.[12]

Simply, the issues raised before us concern the prescription of the administrative action and the sufficiency of evidence to condemn respondent.

Petitioner avers that the action has not prescribed. He points out that the use of a falsified document was committed only on August 31, 1996, when petitioner moved for the reconsideration of the findings of the DECS director, while the administrative complaint was filed on February 17, 1997, or less than one year after the act complained of was committed.

Likewise, petitioner assails the Court of Appeals' ruling that the Ombudsman's findings were speculative and conjectural as these were based on properly presented public documents. He asserts that the patent alterations in the entries of the Registry Book and the obvious discrepancy between the records of the local civil registrar with those of the NCSO shore up the findings that the death certificate was falsified. Moreover, petitioner invokes the established doctrine that findings of fact of administrative agencies are accorded not only respect but also finality when supported by substantial evidence.

For her part, respondent Gironella argues that the action has indeed prescribed since the questioned death certificate was first used when she moved for the dismissal of the complaint for bigamy in 1994, or more than two years before the administrative complaint was filed.

Respondent also counters that although findings of fact of administrative agencies are generally not disturbed on appeal, they are not exempt from judicial review where the administrative agency overlooked certain facts of substance and value which, if considered, would affect the result of the case. She asserts that the joint affidavit of Renerio Maligo, Sr. and Cristita Maligo-Prado is but a self-serving allegation which was not categorically proven by any competent evidence, and that the truth of their relationship to Jimmy Santiago was likewise not proven.

On the matter of prescription, we have in earlier cases ruled that administrative offenses do not prescribe.[13] Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government.[14]

It bears noting that the period stated in paragraph 5, Section 20 of Rep. Act No. 6770[15] does not refer to the

prescription of the offense but to the discretion given to the Office of the Ombudsman on whether it will investigate a particular administrative offense. Note that the word used in the provision is “may.” The term “may” is construed as permissive and operating to confer discretion.[16] Moreover, where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[17]

At this juncture, we stress that the complaint for dishonesty and conduct unbecoming a public officer involves two offenses: (1) the falsification of the entry of death in the local civil registry and (2) the use of the falsified death certificate in a judicial proceeding.

As regards the issue of sufficiency of evidence pertaining to the falsification, petitioner Melchor failed to overcome the presumption of regularity of public records.[18] To contradict this presumption, evidence must be clear, convincing and more than merely preponderant. Falsification cannot be presumed. It must be proved. Hence, there may have been some inconsistencies in the entries in the books of the local civil registrar and those of the NCSO, but these inconsistencies do not prove that Jimmy Santiago is alive. There is yet the possibility that the error may have been with the NCSO, and not with the Civil Registry.

We are inclined to believe respondent that her husband, Jimmy, is dead. People do not normally lie about so grave a matter as the loss of dear ones. It would also be difficult for private respondent to keep undetected the existence of a relative, her husband, but it would be easy for petitioner to show the contrary,[19] i.e., that Jimmy Santiago is alive and well.

Based on the record on hand, we are not inclined to give credit to the joint affidavit of Renerio Maligo, Sr. and Cristita Maligo-Prado. They were not presented as witnesses and were not subjected to cross-examination. Where the affiant did not appear, or was not presented during the administrative investigation to identify his sworn statement or affidavit, said statement or affidavit is hearsay and inadmissible in evidence.[20]

Nothing in our review of the records shows indubitably that the entry of death of Jimmy Santiago is a falsity. Neither is there a showing that respondent and the civil registrar conspired to falsify the death certificate.

For respondent to be administratively liable for the use of a falsified document, it must be shown that she knew of the falsity of the death certificate yet went on to use it. Petitioner failed to show clearly that respondent had knowingly introduced in evidence a falsified document. Nothing on the record reveals that indeed respondent knew of the falsity. In administrative proceedings, the complainant has the burden of proving the allegations in the complaint.[21] We cannot depend on mere conjectures and speculations. There must be substantial evidence to support respondent’s guilt.[22] Without such evidence, respondent’s innocence must be upheld.

WHEREFORE, the petition is DENIED. The Decision dated December 29, 2000 and the Resolution dated December 13, 2001, of the Court of Appeals in CA G.R. SP No. 51596 are hereby AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 23-32. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Ramon Mabutas, Jr., and Eriberto U. Rosario, Jr. concurring.

[2] Id. at 42-44.

[3] Id. at 67.

[4] Id. at 45-52.

[5] Id. at 55-63.

[6] Id. at 64-66.

[7] CA Rollo, p. 38.

[8] Rollo, pp. 70-78.

[9] SEC. 20. Exceptions. – The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

...

(5) The complaint was filed after one year from the occurrence of the act or omission complained of.

[10] The Ombudsman Act of 1989.

[11] Rollo, pp. 30-31.

[12] Id. at 15.

[13] *Floria v. Sunga*, A.M. No. CA-01-10-P, 14 November 2001, 368 SCRA 551, 559.

[14] *Remolona v. Civil Service Commission*, G.R. No. 137473, 2 August 2001, 362 SCRA 304, 314.

[15] *Supra*, note 9.

[16] *Jaramilla v. Commission on Elections*, G.R. No. 155717, 23 October 2003, 414 SCRA 337, 343; *Manufacturers Hanover Trust Co. v. Guerrero*, G.R. No. 136804, 19 February 2003, 397 SCRA 709, 719; *Bautista v. Court of Appeals*, G.R. No. 123655, 19 January 2000, 322 SCRA 365, 376-377; *Tan v. Securities and Exchange Commission*, G.R. No. 95696, 3 March 1992, 206 SCRA 740, 748 citing *Shauf v. Court of Appeals*, G.R. No. 90314, 27 November 1990, 191 SCRA 713, 738; *Bersabal v. Salvador*, No. L-35910, 21 July 1978, 84 SCRA 176, 179.

[17] *National Federation of Labor v. NLRC*, G.R. No. 127718, 2 March 2000, 327 SCRA 158, 165.

[18] See *Declaro v. Court of Appeals*, G.R. No. 119747, 27 November 2000, 346 SCRA 57, 63; See *Caoili v. Court of Appeals*, G.R. No. 128325, 14 September 1999, 314 SCRA 345, 361; *Yturalde v. Vagilidad*, No. L-20571, 30 May 1969, 28 SCRA 393, 400.

[19] *Negros Navigation Co., Inc. v. Court of Appeals*, G.R. No. 110398, 7 November 1997, 281 SCRA 534, 538-539.

[20] *Tapiador v. Office of the Ombudsman*, G.R. No. 129124, 15 March 2002, 379 SCRA 322, 330.

[21] *Artuz v. Court of Appeals*, G.R. No. 142444, 13 September 2001, 365 SCRA 269, 278.

[22] *Mariano v. Roxas*, A.M. No. CA-02-14-P, 31 July 2002, 385 SCRA 500, 505.

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